

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CISCO SYSTEMS, INC.,) CV-14-5344-BLF
)
PLAINTIFF,) SAN JOSE, CALIFORNIA
)
VS.) DECEMBER 5, 2016
)
ARISTA NETWORKS, INC.,) VOLUME 8
) *REDACTED*
DEFENDANT) PAGES 1589-1878
_____)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE BETH LABSON FREEMAN
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: QUINN, EMANUEL, URQUHART & SULLIVAN
BY: DAVID A. NELSON
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FOR THE PLAINTIFF: QUINN, EMANUEL, URQUHART & SULLIVAN
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APPEARANCES CONTINUED ON NEXT PAGE

OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR
CERTIFICATE NUMBER 13185

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

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APPEARANCES (CONTINUED)

FOR THE DEFENDANT: KEKER & VAN NEST, LLP
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1 SAN JOSE, CALIFORNIA

DECEMBER 5, 2016

2 P R O C E E D I N G S

08:27:18 3 (COURT CONVENED AT 8:27 A.M.)

08:27:18 4 THE COURT: GOOD MORNING, EVERYONE. PLEASE BE
08:27:20 5 SEATED.

08:27:20 6 WELL, I APOLOGIZE I DON'T HAVE MUCH OF A VOICE. IT'S A
08:27:23 7 GOOD THING I'M A LISTENER TODAY AND NOT A SPEAKER, BUT WHY
08:27:27 8 DON'T WE GET DOWN TO WORK.

08:27:29 9 LET ME MENTION A COUPLE OF THINGS. I AM PREPARED GIVE YOU
08:27:34 10 RULINGS, AS BEST I CAN, ON THE KASTEN AND SATZ DEPOSITIONS.
08:27:41 11 AND YOU'VE REDUCED THE NUMBER OF OBJECTIONS ON THE EXHIBITS.

08:27:47 12 I HAVEN'T BEEN ABLE TO WORK WITH THEM AT ALL. SO I'M
08:27:51 13 STARTING FROM SCRATCH. I'VE READ NO OBJECTION EXHIBITS. IT
08:27:55 14 TAKES ME THREE OUR FOUR MINUTES TO READ EACH ONE.

08:28:00 15 LET ME JUST MAKE A COMMENT, AND IT PERTAINS TO THE
08:28:02 16 DEPOSITIONS AS WELL.

08:28:04 17 NEVER IN MY WILDEST IMAGINATIONS DID I THINK WHEN YOU GAVE
08:28:09 18 ME YOUR SUBMISSION THAT IT WOULD BE A SHOT ACROSS THE BOW TO
08:28:13 19 THE OTHER SIDE. BUT THAT'S, IN FACT, WHAT IT HAS BEEN.

08:28:15 20 SO IN MY EFFORT TO DEVOTE THE TIME AT NIGHT AND IN THE
08:28:18 21 EARLY MORNING TO BE READY FOR YOU AT 8:30, WHAT I HAVE FOUND IS
08:28:22 22 AN EXTREMELY FRUSTRATING EXERCISE IN DECIDING ISSUES THAT ARE
08:28:27 23 NO LONGER PRESENTED TO THE COURT.

08:28:29 24 AND SO THAT HAS NOT BEEN PRODUCTIVE. AND SO I WILL NOW BE
08:28:36 25 GLAD TO COME AT 8:30 OR EVEN 8:15, AND YOU CAN ORALLY PRESENT

08:28:41 1 TO ME YOUR OBJECTIONS FOR THE DAY. BUT I CANNOT MANAGE DOZENS
08:28:44 2 OF E-MAILS WITH HUNDREDS OF EXHIBITS ATTACHED TO THEM IN NO
08:28:49 3 PARTICULAR ORDER, AND THEN RECEIVE -- THIS MORNING I CAME INTO
08:28:58 4 THE REDUCTION IN THE EXHIBITS THAT WERE AT ISSUE, AND IT TOOK
08:29:02 5 ME 15 MINUTES TO EVEN LOCATE IN YOUR THREE-PAGE BRIEF, WHERE
08:29:07 6 THOSE EXHIBITS WERE LOCATED IN THE ARGUMENT, BECAUSE NOTHING IS
08:29:13 7 IN CHRONOLOGICAL ORDER.

08:29:15 8 SO I WILL WORK WITH YOU, AND I WILL ONLY RECEIVE THE
08:29:17 9 THINGS YOU HAVE BEEN UNABLE TO RESOLVE, AND SO THAT'S THE BEST
08:29:23 10 I CAN DO. I WAS SURPRISED THAT EVEN THE DEPOSITION OBJECTIONS
08:29:27 11 KEPT NARROWING. I'M ALWAYS GLAD FOR IT TO NARROW. I
08:29:31 12 APPRECIATE THE EFFORT YOU ARE PUTTING IN. BUT I WANTED TWO
08:29:35 13 DAYS BECAUSE THAT'S WHEN I WANTED TO START WORKING ON IT, AND
08:29:38 14 NOW I'VE REALIZED UNTIL I SIT HERE AT 8:30 IN THE MORNING, I'M
08:29:42 15 WASTING MY TIME.

08:29:43 16 SO WITH THAT BEING SAID, I AM PREPARED, AND IN ANY ORDER
08:29:47 17 YOU WANT, TO GO OVER THE EXHIBITS FOR TODAY OR THE DEPOSITIONS.

08:29:51 18 IT SHOULD TAKE ME EASILY 30 MINUTES TO GET THROUGH THE
08:29:55 19 DEPOSITION OBJECTIONS, BECAUSE I HAVE QUESTIONS. BUT I'M GLAD
08:29:58 20 TO JUST START AT THE TOP. IT'S YOUR PREFERENCE.

08:30:04 21 MR. VAN NEST: YOUR HONOR, I THINK WITH RESPECT TO
08:30:06 22 THIS MORNING, WE GET THE MESSAGE, I THINK EVERYBODY.

08:30:11 23 LET ME REPORT, AND MS. MCCLOSKEY CAN CORRECT ME, WE SENT
08:30:18 24 IN THE GOURLAY DEPO LAST NIGHT BUT WE HAVEN'T GIVEN THE PAPER
08:30:25 25 YET BECAUSE THE OBJECTIONS THERE HAVE BEEN DRAMATICALLY

08:30:27 1 NARROWED, AND WE WILL PRESENT THEM ON PAPER HOPEFULLY BY
08:30:29 2 MID-DAY. THERE MAY BE NONE, AND THAT WILL TAKE CARE OF
08:30:33 3 GOURLAY.

08:30:33 4 WE WOULD LIKE TO PLAY SATZ TODAY. WE ARE NOT PLANNING TO
08:30:37 5 PLAY KASTEN UNTIL TOMORROW OR WEDNESDAY, BUT IF YOU HAVE
08:30:40 6 RULINGS ON SATZ --

08:30:42 7 THE COURT: I DO.

08:30:43 8 MR. VAN NEST: YOU CAN GIVE US THOSE.

08:30:44 9 AND IF YOU HAVE RULINGS ON KASTENS, YOU CAN GIVE US THOSE.
08:30:47 10 AND I THINK -- WE DON'T HAVE ANY REMAINING EXHIBIT OBJECTIONS.

08:30:49 11 THE COURT: NO, I DON'T BELIEVE YOU DO.

08:30:51 12 MR. VAN NEST: AND THEN WE COULD TURN TO THE
08:30:52 13 OBJECTIONS, AND IF THEY WANT TO ARGUE THEM, THAT'S FINE,
08:30:55 14 WHATEVER THE COURT WANTS TO DO.

08:30:56 15 THE COURT: OKAY. AND AS YOU KNOW, I AM GLAD TO
08:30:58 16 DEVOTE ALL DAY TO THE OBJECTIONS, THE CLOCK JUST STARTS RUNNING
08:31:02 17 AT 9:00. I AM NOT IN ANY HURRY HERE. YOU ARE THE ONES IN A
08:31:05 18 HURRY, AND THAT'S WHY I'VE GIVEN YOU THE 30 MINUTES EVERY DAY.

08:31:10 19 ALL RIGHT. SO I AM MORE THAN GLAD TO START WITH THE SATZ
08:31:16 20 DEPOSITION IF YOU WOULD LIKE ME TO. AND IT'S GOING TO BE --
08:31:20 21 THE SATZ HAS GREATLY REDUCED TO A SINGLE PAGE, UNFORTUNATELY
08:31:25 22 THAT WAS AFTER I HAD ALREADY WORKED THROUGH ALL OF THEM ON THE
08:31:27 23 OTHER, BUT HERE WE ARE.

08:31:30 24 THERE IS AN OBJECTION TO PAGE 32, LINES 3 TO 8 REGARDING
08:31:39 25 THE SHOW COMMANDS BASED ON FOUNDATION AND LACK OF MEMORY ON THE

08:31:44 1 DOCUMENT. I'M GOING TO OVERRULE THAT OBJECTION BECAUSE I THINK
08:31:48 2 THE WITNESS WAS ACTUALLY TESTIFYING FROM HIS OWN PERSONAL
08:31:51 3 KNOWLEDGE, NOT FROM THE DOCUMENT ITSELF.

08:31:56 4 NOW, ONCE -- AND SO THEN AS TO THE COUNTER DESIGNATION,
08:32:08 5 FRANKLY, I HAVE A QUESTION FOR ARISTA -- NO, ACTUALLY, THESE
08:32:13 6 WERE CISCO'S COUNTER DESIGNATIONS.

08:32:15 7 ARE THESE COUNTER DESIGNATIONS SUPPOSED TO RELATE TO THE
08:32:18 8 FIVE LINES THAT ARE DESIGNATED?

08:32:24 9 MS. JENKINS: SO, YOUR HONOR, I'M NOT SURE EXACTLY
08:32:26 10 WHICH COUNTER YOU ARE TALKING ABOUT. FOR THE MOST PART, YES,
08:32:29 11 WE HAVE ATTEMPTED TO DO THAT.

08:32:30 12 IN SOME CASES IT MAY RELATE MORE BROADLY TO SOME OF THE
08:32:34 13 OTHER TESTIMONY, BUT WE HAVE ATTEMPTED TO CONNECT IT TO THE
08:32:38 14 DIRECT TESTIMONY THAT IT RELATES TO.

08:32:39 15 THE COURT: HOW DO I KNOW THAT IT'S AN IMPROPER
08:32:44 16 COUNTER IF I DON'T KNOW WHAT IT'S RELATED TO?

08:32:46 17 MS. JENKINS: SO ON THE FIRST PAGE OF THE CHART --

08:32:48 18 THE COURT: I ONLY HAVE THE REVISED CHART. NOW, WAS
08:32:51 19 I SUPPOSED TO ALSO LOOK AT THE ONE THAT I THOUGHT WAS
08:32:54 20 SUPERSEDED?

08:32:55 21 MS. JENKINS: WE DID NOT SUBMIT THE REVISED CHART. I
08:32:58 22 ASSUME WHAT I HAVE IS THE REVISED CHART, AND THAT IS CORRECT.

08:33:03 23 THE COURT: I GOT A ONE-PAGE REVISED CHART,
08:33:05 24 MS. JENKINS.

08:33:08 25 MS. JENKINS: I HAVE -- IS IT TWO-SIDED OR ONE-SIDED?

08:33:11 1 THE COURT: WELL, I HAD IT ON MY IPAD, SO THERE'S
08:33:15 2 NOTHING TWO SIDED.

08:33:17 3 I'M SORRY, YOU DID SUBMIT TO ME A MULTIPAGE CHART OF
08:33:22 4 OBJECTIONS, AND THEN EITHER SATURDAY OR SUNDAY, ALTHOUGH I
08:33:31 5 DIDN'T SEE IT UNTIL THIS MORNING, I GOT WHAT WAS CALLED A
08:33:33 6 REVISED OBJECTION, WHICH WAS A SINGLE PAGE.

08:33:37 7 SO, MS. JENKINS, YOU CERTAINLY CAN APPRECIATE HOW
08:33:40 8 DIFFICULT THIS HAS BEEN FOR ME BECAUSE I CAN'T FIGURE OUT WHAT
08:33:43 9 I'M SUPPOSED TO DECIDE.

08:33:45 10 MS. JENKINS: I CAN, YOUR HONOR. I APOLOGIZE. I MAY
08:33:48 11 NOT HAVE THE SAME ONE THAT YOU HAVE BECAUSE I KNOW THAT ARISTA
08:33:53 12 SUBMITTED THESE AND THAT THEY ARE THE ONES THAT CUT IT DOWN,
08:33:56 13 OUR OBJECTIONS, SO I MAY BE LOOKING AT THE WRONG THING.

08:34:06 14 MR. SANTACANA: YOUR HONOR, YOU ARE CORRECT, IT WAS
08:34:08 15 SATURDAY EVENING THAT A REVISED CHART WAS SUBMITTED. AND I
08:34:11 16 THINK THE CHART WAS TWO PAGES, FROM WHAT I'M LOOKING AT.

08:34:14 17 THE COURT: I PRINTED THE DOCUMENT, AND IT PRINTED AS
08:34:17 18 ONE PAGE, BUT I COULD HAVE EASILY MADE A MISTAKE.

08:34:29 19 (OFF-THE-RECORD DISCUSSION.)

08:34:35 20 THE COURT: OH, THERE IS A SECOND PAGE. WELL, MY
08:34:38 21 MISTAKE IN PRINTING IT OUT. I HAVEN'T LOOKED AT THE REMAINDER.
08:34:43 22 MAYBE I GOT TO THEM ON THE OTHER CHART. IT LOOKS LIKE I
08:34:46 23 PROBABLY GOT TO MANY OF THEM, SO IT SHOULDN'T BE A PROBLEM
08:34:50 24 BECAUSE I HAD RULED ON MUCH OF THIS.

08:34:52 25 ALL RIGHT. LET'S START WITH PAGE 1 OF THE REVISED. I'VE

08:34:56 1 GOT PAGE 2 HERE. I APOLOGIZE FOR THAT ERROR. I DON'T SEE
08:35:05 2 HOW -- I'M NOT UNDERSTANDING ON CISCO'S PART HOW ALL OF THESE
08:35:09 3 DESIGNATIONS ON PAGES 93, 96, 152, 153, 156, 161, AND 162 COULD
08:35:18 4 POSSIBLY RELATE TO THE SHOW COMMAND, MODEST AMOUNT OF TESTIMONY
08:35:25 5 THAT ARISTA HAS DESIGNATED.

08:35:27 6 AND SO I'M ASKING YOU IF -- I MEAN, ARISTA IS SAYING IT'S
08:35:33 7 AN IMPROPER COUNTER DESIGNATION, AND I NEED TO KNOW WHAT IT'S A
08:35:38 8 COUNTER TO SO THAT I CAN EVALUATE THAT.

08:35:42 9 MS. JENKINS: YOUR HONOR, WE DESIGNATED THOSE BECAUSE
08:35:44 10 IT WAS TESTIMONY TALKING ABOUT THE PROCESS OF A COMMAND
08:35:46 11 CREATION, WHICH WAS NOT SPECIFIC TO THE TESTIMONY THAT THEY
08:35:49 12 DESIGNATED, BUT WAS MORE GENERAL.

08:35:52 13 MR. PAK: YOUR HONOR, JUST IN THE INTEREST OF TIME I
08:35:54 14 THINK WE WILL WITH WITHDRAW THOSE DESIGNATIONS THAT START WITH
08:36:00 15 PAGE 93.

08:36:00 16 THE COURT: OKAY.

08:36:01 17 MR. PAK: I THINK THE ONES THAT WE WOULD LIKE
08:36:03 18 YOUR HONOR'S RULINGS ON WOULD BE THE ONES THAT ARE RIGHT AROUND
08:36:05 19 THAT PAGE 32, THOSE ARE THE 32-9 TO 32 ---

08:36:11 20 THE COURT: WHICH ONE IS 32 -- THE NEXT ONE, YES.

08:36:15 21 SO FOR 32-9 THROUGH 35-11, I WILL OVERRULE THAT OBJECTION.
08:36:20 22 FOR 35-13 TO 35-23, I WILL OVERRULE THAT OBJECTION.

08:36:25 23 NOW, LET ME, I'M GOING TO HAVE TO COMBINE MY CHARTS -- OH,
08:36:40 24 I'M LOOKING AT KASTEN, THAT'S MY PROBLEM.

08:37:04 25 35-25 -- WELL, THIS ONE ACTUALLY I'M USING BECAUSE 35-25

08:37:09 1 WAS NOT EVEN OBJECTED TO IN THE ORIGINAL ONE, WERE YOU JUST
08:37:12 2 ADDING SOMETHING FOR ME?

08:37:18 3 MR. PAK: 35-25, YOUR HONOR, I THINK THE ONLY
08:37:22 4 OBJECTION WAS THE FOUNDATION. I THINK THIS WAS IN ARISTA'S
08:37:25 5 DESIGNATION. 35-25 WAS JUST THAT THE LACK OF MEMORY OF THE
08:37:29 6 DOCUMENTS AT ISSUE.

08:37:31 7 THE COURT: WELL, 35-25 WAS JUST AN ANSWER.

08:37:37 8 MR. PAK: ALL RIGHT.

08:37:43 9 THE COURT: AND THE ANSWER IS, YES. DO YOU SEE THE
08:37:45 10 PAGE? THERE'S SOMETHING WRONG THERE.

08:37:48 11 AND NOW LET ME ASK YOU TO TURN TO PAGE 17, THERE'S A
08:37:52 12 REFERENCE ON PAGE 17 OF THE EXHIBIT TO THE INTERFACE. DO YOU
08:37:58 13 SEE THAT?

08:37:59 14 ANSWER: YES.

08:38:01 15 I'M SURE YOU ARE NOT ASKING ME TO RULE ON THAT.

08:38:03 16 MR. PAK: NO.

08:38:04 17 THE COURT: SO I DON'T KNOW WHAT YOU WERE INTENDING
08:38:06 18 MY TO LOOK AT.

08:38:06 19 MR. PAK: I THINK WE WILL WITHDRAW THAT, YOUR HONOR.

08:38:09 20 THE COURT: I BET YOU WILL. OKAY.

08:38:15 21 ALL RIGHT. 36-5 TO 36-15, I WILL OVERRULE THAT OBJECTION.

08:38:44 22 SO THEN WE GET TO A SERIES OF OBJECTIONS INVOLVING THE
08:38:49 23 SNMP COMMANDS, AND ACTUALLY ALTHOUGH I TRIED TO READ AROUND THE
08:38:54 24 DESIGNATED SECTIONS, I ACTUALLY DON'T EVEN KNOW WHAT THE
08:38:57 25 RELEVANCE OF THE SNMP COMMANDS IS, AND SO IT DIDN'T SEEM LIKE A

08:39:04 1 PROPER DESIGNATION, BUT I REALIZED BECAUSE THERE WAS SO MUCH
08:39:08 2 OBJECTION TO THIS, I MUST BE MISSING SOMETHING.

08:39:10 3 SO BEFORE I SUSTAIN THE OBJECTION, I NEED TO KNOW WHAT
08:39:15 4 RELEVANCE THERE IS TO THOSE DESIGNATIONS.

08:39:26 5 MR. PAK: YOUR HONOR, YOU WERE TALKING ABOUT OUR
08:39:28 6 COUNTER DESIGNATIONS STARTING ON PAGE 70?

08:39:31 7 THE COURT: SO I'M LOOKING AT THE -- I'M LOOKING AT
08:39:34 8 THE CHART ON PAGE 2 IN REGARD TO THIS 36, LINE 5. AND I RULED
08:39:40 9 ON THAT. AND THEN THERE IS THE COUNTER DESIGNATION, I DON'T
08:39:44 10 KNOW WHAT PAGES IT IS, SO I CAN'T RULE ON IT.

08:39:48 11 MR. PAK: WITH RESPECT TO 36, LINE 5, YOUR HONOR?

08:39:52 12 THE COURT: WELL, ON 36, LINE 5, I HAVE OVERRULED
08:39:56 13 THAT OBJECTION, RIGHT. RIGHT.

08:40:00 14 MR. PAK: SO, YOUR HONOR --

08:40:01 15 THE COURT: AND THEN YOU'VE GOT AN OBJECTION TO SOME
08:40:06 16 CATEGORY OF TESTIMONY, BUT YOU GAVE ME NOTHING TO LOOK AT.

08:40:14 17 MR. PAK: OH, YOUR HONOR, I THINK WHERE THIS MIGHT BE
08:40:17 18 RELATED TO WHAT WE DISCUSSED EARLIER IS THERE IS TESTIMONY THAT
08:40:24 19 TALKS ABOUT THE STANDARDS ISSUE THAT WE HAVE BEEN DISCUSSING
08:40:28 20 THROUGHOUT THE CASE.

08:40:28 21 THE COURT: YES.

08:40:29 22 MR. PAK: AND WE HAD IDENTIFIED SOME TESTIMONY THAT
08:40:33 23 SHOWS THAT A CREATIVE PROCESS WITH MR. SATZ AS RESPONSE TO
08:40:39 24 DESIGNATIONS TALKING ABOUT STANDARDS, THE CLI AS AN INDUSTRY
08:40:43 25 STANDARD, AND I THINK IS ALL WRAPPED UP TOGETHER AS A

08:40:47 1 COLLECTION OF DESIGNATIONS.

08:40:49 2 THE COURT: I APPRECIATE THAT, MR. PAK. BUT IF YOU
08:40:51 3 DON'T GIVE ME LINE AND PAGE NUMBER, I HAVE NOTHING TO REVIEW.

08:40:54 4 MR. PAK: YES. SO WE ARE FINE, YOUR HONOR, WITH
08:40:57 5 WITHDRAWING ON 36. WE DO HAVE THE LINES, BUT I THINK IN THE
08:41:00 6 INTEREST OF TIME, YOUR HONOR, WE DID WITHDRAW DESIGNATIONS ON
08:41:03 7 THE PRIOR PAGE WHICH IS REFERENCED --

08:41:05 8 THE COURT: OKAY. THEN WHEN I GO TO THE NEXT
08:41:09 9 CATEGORY WHICH IS PAGE 70, LINE 7 TO 70.11, THIS IS THE
08:41:14 10 TESTIMONY ON THE SNMP COMMANDS?

08:41:17 11 MR. PAK: CORRECT.

08:41:20 12 THE COURT: I DON'T KNOW WHAT RELEVANCE THERE IS TO
08:41:22 13 ANYTHING SO YOU NEED TO DESCRIBE THAT TO ME.

08:41:24 14 MR. PAK: YOUR HONOR, I THINK THIS IS WITH RESPECT TO
08:41:27 15 THE TERM SNMP SERVER WHEN APPEARS IN SOME OF THE COMMANDS. SO
08:41:32 16 THERE'S TESTIMONY FROM BOTH SIDES THAT WE'VE DESIGNATED THAT
08:41:35 17 PERTAINS TO THE SNMP SERVER AND THE CONCEPT OF A COMMUNITY,
08:41:39 18 WHICH ARE CLAIM, WHICH ARE COMMAND TERMS THAT APPEAR THAT WERE
08:41:56 19 ASSERTED IN THIS CASE.

08:41:57 20 THAT'S THE REASON WHY I BELIEVE ARISTA HAS DESIGNATED SOME
08:42:00 21 TESTIMONY FROM PAGE 70 AND PAGE 76, AND WE ARE COUNTER
08:42:03 22 DESIGNATING WITH SOME SURROUNDING TESTIMONY.

08:42:12 23 THE COURT: OKAY. SO AS TO -- WELL, THE ORIGINAL
08:42:15 24 DESIGNATION RELATES TO SNMP HERE.

08:42:19 25 MR. PAK: CORRECT.

08:42:20 1 THE COURT: AND SO THE REMAINDER WOULD SPEAK TO THE
08:42:22 2 FURTHER TESTIMONY OF THE WITNESS.

08:42:23 3 MR. PAK: CORRECT.

08:42:24 4 THE COURT: ALL RIGHT. AND THEN THE OBJECTION IS
08:42:27 5 THAT THIS WOULD BE PREJUDICIAL, AND I DON'T KNOW WHY IT WOULD
08:42:31 6 BE PREJUDICIAL.

08:42:36 7 MR. PAK: THAT'S RIGHT, WE DON'T AGREE WITH ARISTA'S
08:42:39 8 OBJECTION TO --

08:42:40 9 THE COURT: I UNDERSTAND. SO I'M WONDERING IF --
08:42:44 10 MR. SANTACANA, ARE YOU THE ONE ARGUING THIS? IF YOU COULD TELL
08:42:51 11 ME ABOUT WHAT'S PREJUDICIAL TO THE COUNTER DESIGNATION.

08:42:54 12 MR. SANTACANA: YOUR HONOR, I THINK OUR PRIMARY
08:42:56 13 CONCERN IS THAT THE DESIGNATION JUST GOES WELL BEYOND -- THE
08:42:58 14 COUNTER GOES WELL BEYOND THE DESIGNATED TESTIMONY.

08:43:02 15 SO I WILL BE HONEST, I THINK MAYBE 403 WILL BE, WHAT WE
08:43:08 16 REALLY MEANT WAS 402 AND IMPROPER COUNTER ON THIS ONE.

08:43:12 17 THE COURT: OKAY. ALL RIGHT. THEN I WILL OVERRULE
08:43:14 18 THE OBJECTION ON THE SNMP, AND THAT WOULD APPLY TO EVERY WHERE
08:43:19 19 IT'S DESIGNATED.

08:43:20 20 MR. PAK: THANK YOU, YOUR HONOR.

08:43:31 21 THE COURT: AND THAT TAKES CARE OF IT, I THINK.

08:43:33 22 MR. PAK: YES. GREAT. THANK YOU VERY MUCH.

08:43:36 23 MR. VAN NEST: CAN I BE CLEAR. I'M NOT SURE WHAT'S
08:43:39 24 BEEN WITHDRAWN. I KNOW MR. PAK REFERENCED A LOT OF THINGS THAT
08:43:43 25 WERE WITHDRAWN.

08:43:44 1 MR. PAK: YES. I WILL STATE CLEARLY WHAT WE HAVE
08:43:47 2 WITHDRAWN.

08:43:48 3 WE HAVE WITHDRAWN ON PAGE 1, 93, LINE 3 TO 93, LINE 6.
08:43:54 4 93, LINE 8 TO 94, LINE 8.
08:43:59 5 PAGE 96, LINE 8 TO PAGE 98, LINE 4.
08:44:04 6 PAGE 152, LINE 8 TO 152, LINE 13.
08:44:11 7 153, LINE 16 TO PAGE 154, LINE 1.
08:44:17 8 PAGE 156, LINE 7 TO PAGE 157, LINE 24.
08:44:22 9 PAGE 161, LINE 19 TO PAGE 161, LINE 23.
08:44:29 10 AND, LASTLY, 162, LINE 5 TO 162, LINE 9.

08:44:34 11 MR. VAN NEST: THOSE HAVE BEEN WITHDRAWN. WE WILL
08:44:37 12 CUT THE TAPE. THANK YOU, YOUR HONOR.

08:44:38 13 MR. PAK: THANK YOU, YOUR HONOR.

08:44:39 14 THE COURT: ALL RIGHT. WOULD YOU LIKE TO GO ON TO
08:44:40 15 THE KASTEN DEPOSITION?

08:44:42 16 MR. VAN NEST: WE DON'T PLAN TO PLAY KASTEN TODAY,
08:44:45 17 BUT IF YOU ARE READY --

08:44:46 18 THE COURT: IT'S YOUR CHOICE AS TO HOW WE CAN SPEND
08:44:49 19 YOUR TIME THIS MORNING.

08:44:50 20 MR. VAN NEST: I THINK THAT'S FINE. LET'S DO KASTEN,
08:44:52 21 THAT WOULD BE GREAT.

08:44:53 22 THE COURT: LET'S DO KASTEN. OKAY. ALL RIGHT.

08:44:57 23 I HAVE THE REVISED SHEET, WHICH ACTUALLY THIS ONE IS ABOUT
08:45:00 24 SIX PAGES LONG.

08:45:01 25 MS. MCCLOSKEY, ARE YOU HANDLING THIS ONE?

08:45:09 1 SO I HAVE TO START WITH A REQUEST BECAUSE IT'S THREADED
08:45:18 2 THROUGHOUT HERE. WHEN YOU TURN TO PAGE 81, LINE 2 -- AND THIS
08:45:23 3 HAS TO DO WITH THE JUNOS, I GUESS IT'S THE JUNOS SE, I'M NOT
08:45:27 4 SURE WHETHER IT'S JUNOS E, I DON'T KNOW HOW THEY SAY IT.

08:45:32 5 I HAVE NO IDEA WHAT THAT'S TALKING ABOUT OR WHY THAT WOULD
08:45:35 6 BE RELEVANT. SO I JUST COULDN'T -- I JUST COULDN'T PICK UP
08:45:40 7 WHAT THIS WAS ABOUT --

08:45:42 8 MR. VAN NEST: WHICH PAGE, YOUR HONOR?

08:45:43 9 THE COURT: SO I'M ON PAGE 81. WHEN I LOOK AT THE
08:45:46 10 VERY FIRST OBJECTION, IS AN ARISTA OBJECTION, AND YOU'RE
08:45:50 11 OBJECTING AT PAGE 81-22 TO 82-10 AND AGAIN 82-13. I DON'T
08:45:58 12 ACTUALLY UNDERSTAND WHAT THIS IS EVEN ABOUT, AND MAYBE THAT'S
08:46:03 13 PART OF YOUR POINT THERE, AND MAYBE CISCO HAS TO TELL ME WHY
08:46:07 14 THEY DESIGNATED IT BECAUSE I DON'T UNDERSTAND.

08:46:12 15 MR. VAN NEST: THAT'S OUR OBJECTION TO THEIR COUNTER,
08:46:14 16 THAT'S RIGHT.

08:46:16 17 THE COURT: YEAH. SO, MR. PAK, IT MUST BE IMPORTANT.
08:46:19 18 YOU MUST REALLY WANT IT OR THEY MUST REALLY WANT TO KEEP IT
08:46:22 19 OUT, BUT IT WENT OVER MY READ.

08:46:23 20 MR. PAK: YOUR HONOR, I BELIEVE THIS HAS TO DO WITH
08:46:27 21 JUST ASSESSING CONTENTS. THERE ARE TWO LINE OF PRODUCTS AT
08:46:31 22 JUNIPER THAT WE HAVE BEEN DISCUSSING IN THIS CASE, AND WE WILL
08:46:35 23 HAVE MR. SHAFER TALK ABOUT ONE OF THOSE PRODUCTS, THAT'S THE
08:46:38 24 JUNOS AND THEN THERE'S JUNOS E.

08:46:42 25 THE COURT: OKAY.

08:46:42 1 MR. PAK: MR. SHAFER, WHO WILL TESTIFY LIVE TOMORROW,
08:46:46 2 WILL TALK ABOUT JUNOS. AND MR. KASTEN WAS PRIMARILY DESIGNATED
08:46:49 3 DURING HIS DEPOSITION TO TALK ABOUT JUNOS E.

08:46:52 4 THE COURT: OKAY.

08:46:52 5 MR. PAK: SO JUNOS SE IS THE PRIMARY OPERATING SYSTEM
08:46:57 6 THAT JUNOS CONTINUES TO MAKE THAT RUNS ON ALL OF THEIR
08:47:02 7 PRODUCTS.

08:47:02 8 JUNOS E, BASED UPON THE TESTIMONY OF MR. KASTEN AND THE
08:47:07 9 DOCUMENTS WE HAVE SEEN, IS AN OPERATING SYSTEM THAT JUNIPER
08:47:10 10 ACQUIRED FROM A THIRD PARTY. IT'S BEEN DISCONTINUED.

08:47:14 11 SO THAT'S THE OPERATING SYSTEM THAT DR. BLACK ANALYZED,
08:47:16 12 BUT DR. BLACK DID NOT ANALYZE JUNOS, WHICH IS THE PRIMARY
08:47:21 13 OPERATING SYSTEM.

08:47:22 14 SO MANY OF THESE COUNTERS ARE DESIGNED TO ELICIT THE FACT
08:47:28 15 THAT JUNOS SE IS NO LONGER IN OPERATION AND THAT THIS IS NOT
08:47:33 16 THE SAME AS JUNOS, AND, THEREFORE, FROM A CUSTOM USAGE OR FAIR
08:47:39 17 USE PERSPECTIVE, THAT THE RIGHT, FROM CISCO'S PERSPECTIVE, THE
08:47:43 18 PROPER OPERATING SYSTEM TO FOCUS ON FROM JUNIPER IS JUNOS.
08:47:48 19 THAT'S REALLY WHAT WE ARE TRYING TO GET AT WITH MANY OF THESE
08:47:54 20 DEPOSITIONS.

08:47:54 21 THE COURT: THAT WAS BEYOND WHAT I COULD PUT
08:47:56 22 TOGETHER.

08:47:57 23 MR. PAK: IT'S HARD TO PIECE THAT TOGETHER, AND
08:47:58 24 THAT'S THE REASON WHY YOU ARE SEEING THAT.

08:48:01 25 MR. SANTACANA: SO YOUR HONOR IS -- I UNDERSTAND WHY

MR. PAK WANTS TO ELICIT THAT TESTIMONY IN HIS DEPOSITION. THE REASON WE COUNTERED -- I'M SORRY, OBJECTED TO ONLY THESE COUNTERS IS BECAUSE THESE ARE THE ONLY COUNTERS WE THINK ARE CLEARLY OUTSIDE THE SCOPE OF WHAT WE DESIGNATED.

SO IF WE LOOK AT WHAT WE HAVE ON PAGE 21, THIS QUESTION OF WHETHER JUNOS E IS OR IS NOT SOLD IS JUST SORT OF A SEPARATE QUESTION. AND, OF COURSE, CISCO WAS FREE TO DESIGNATE PARTS OF THIS DEPOSITION IF THEY WANTED IT, BUT THEY DIDN'T DO THAT, AND WE THINK INSTEAD TRIED TO COUNTER IN WHAT THEY WANT, ESSENTIALLY.

MR. PAK: YOUR HONOR, WE DON'T BELIEVE THAT'S TRUE.

THE COURT: SO THAT'S WHO JUNIPER PURCHASED, ACQUIRED IT THROUGH, THAT'S THE --

MR. PAK: THAT'S RIGHT, YOUR HONOR.

AND, AGAIN, FROM OUR PERSPECTIVE, WE DON'T THINK THAT JUNOS SE IS REALLY RELEVANT TO THE CASE IN THE SENSE THAT IT'S A DISCONTINUED PRODUCT.

BUT TO THE EXTENT THAT THEY ARE OFFERING MR. KASTEN'S TESTIMONY TO TALK ABOUT THIS DISCONTINUED PRODUCT, WE WOULD LIKE TO SET THE RIGHT FACTUAL FRAMEWORK.

THE COURT: SO I COULDN'T TELL FROM THE -- SEE, SO MAYBE I TOOK TOO NARROW A VIEW, BUT WHEN I SAW ARISTA'S DESIGNATION OF PAGE 21, LINE 3 TO 15, I PRESUMED THAT THE COUNTER DESIGNATION RELATED TO THE SCOPE OF THE INITIAL DESIGNATION. AND NOWHERE IN THIS PAGE 21, 3 TO 15, IS JUNOS E

08:49:28 1 MENTIONED. SO IT LOOKS LIKE IT WAS OUTSIDE THE SCOPE.

08:49:31 2 MR. PAK: RIGHT. AND YOU COULD SEE THAT THIS SET OF
08:49:34 3 DESIGNATIONS ON THE DISCONTINUATION OF THE PRODUCT CUTS ACROSS
08:49:39 4 SOME OF OUR OTHER COUNTER DESIGNATIONS.

08:49:42 5 SO REALLY THE ISSUE IS, YOU KNOW, IT'S FINE IF ARISTA
08:49:46 6 WANTS TO BRING IN SOME TESTIMONY AROUND THIS DISCONTINUED
08:49:49 7 PRODUCT, WE JUST WANT TO GET THE FACTS IN FRONT OF THE JURY
08:49:53 8 THAT JUNO E HAS BEEN END OF LIFE, AND THAT --

08:49:59 9 THE COURT: HAS ALREADY TERMINATED?

08:50:01 10 MR. PAK: HAS ALREADY BEEN TERMINATED, IT'S NO LONGER
08:50:04 11 IN USE.

08:50:04 12 THE COURT: AND WHAT YEAR WAS IT TERMINATED? I
08:50:07 13 BELIEVE IT WAS TERMINATED A FEW YEARS AGO, BUT THE TESTIMONY
08:50:10 14 THAT WE HAVE IS AT THE BOTTOM OF PAGE 81, I WOULD IMAGINE
08:50:17 15 THAT'S TRUE, AND IF YOU GO ON, THAT THE CURRENT JUNIPER'S
08:50:26 16 STRATEGIC CURRENT AND FUTURE IS ABOUT JUNOS AND NOT JUNOS SE.

08:50:32 17 THERE IS NO YEAR THERE.

08:50:34 18 MR. PAK: I DON'T THINK IT'S A SPECIFIC YEAR. IT
08:50:37 19 MIGHT BE A FACT THAT WE CAN ELICIT FROM MR. SHAFER, WHO WILL
08:50:41 20 TESTIFY TOMORROW, BUT MR. KASTEN'S ROLE AT JUNIPER WAS TO WORK
08:50:45 21 WITH THIS THIRD PARTY PRODUCT THAT'S BEEN DISCONTINUED.

08:50:48 22 THE COURT: I THINK YOU ARE GOING TO HAVE TO ACTUALLY
08:50:51 23 ESTABLISH THAT ELSEWHERE. I DON'T THINK THAT ESTABLISHES THAT
08:50:54 24 DURING THE RELEVANT TIMEFRAME JUNOS SE WAS ESTAMPED. AND SO I
08:50:59 25 JUST DON'T THINK IT'S DOING WHAT YOU THINK IT WAS DOING.

08:51:02 1 ALL RIGHT. I'M GOING TO SUSTAIN THE OBJECTIONS TO
08:51:07 2 81-LINE 22 TO 82, LINE 10, AND PAGE 82, LINE 13 TO 83, 13.

08:51:16 3 I'M GOING TO OVERRULE ALL OF THE OBJECTIONS ON 83, LINE 14
08:51:22 4 TO 83, LINE 16, AND 83, LINE 18 TO 84, LINE 10, THOSE ARE
08:51:29 5 OVERRULED.

08:51:29 6 NOW, WHEN I GO BACK INTO THE CISCO OBJECTION COLUMN ON
08:51:34 7 PAGE 25, LINE 18, I'M GOING TO OVERRULE THAT OBJECTION,
08:51:40 8 ALTHOUGH THE WITNESS DID NOT SHOW PERSONAL KNOWLEDGE OF THE
08:51:43 9 DOCUMENT, HIS TESTIMONY RELATED TO THINGS HE CLEARLY RECALLED.

08:51:50 10 THEN LET'S SEE, PAGE 33, LINE 24 TO 34, LINE 4. I'M GOING
08:51:59 11 TO SUSTAIN FOR LACK OF FOUNDATION. PAGE 35, LINE 15 -- I'M
08:52:10 12 SORRY. PAGE 34, LINE 15 TO 34, LINE 19, I'M GOING TO OVERRULE
08:52:17 13 THAT OBJECTION.

08:52:19 14 PAGE 39, LINE 1 TO 39, LINE 9, I'M GOING TO SUSTAIN THE
08:52:26 15 OBJECTION. IT DOES APPEAR TO BE SPECULATION REGARDING THE
08:52:32 16 OVERLAP BETWEEN JUNOS AND CISCO.

08:52:35 17 AS TO THE COUNTER DESIGNATIONS, I DIDN'T ACTUALLY SEE HOW
08:52:40 18 THIS RELATED AGAIN. SO ONE OF THE OBJECTION WAS THAT IT WAS
08:52:44 19 OUTSIDE THE SCOPE OF THE DESIGNATION, AND I WAS SYMPATHETIC TO
08:52:49 20 THAT BECAUSE I DIDN'T SEE HOW IT RELATED.

08:52:52 21 MR. PAK, CAN YOU INFORM ME, THIS IS --

08:52:56 22 MR. PAK: SURE, YOUR HONOR. I THINK THAT, AGAIN,
08:52:58 23 THIS GOES TO THE -- NOW, IT MIGHT BE MOOT BECAUSE AS I
08:53:02 24 UNDERSTAND IT, YOUR HONOR IS SUSTAINING THE OBJECTION TO
08:53:05 25 PAGE 39 WHICH TALKS ABOUT COPYING.

08:53:07 1 THE COURT: RIGHT.

08:53:08 2 MR. PAK: SO IF YOU PICK UP ON THE DESIGNATIONS THAT
08:53:10 3 WE HAD AT PAGE 74, LINE 23, WE -- WE HAD SOME COUNTER
08:53:17 4 DESIGNATIONS TALKING ABOUT THE WORDS "COPYING" AND
08:53:20 5 "CISCO-LIKE."

08:53:20 6 THE COURT: RIGHT.

08:53:21 7 MR. PAK: AND SOME OF THAT TESTIMONY WAS TO REALLY
08:53:23 8 SET THE --

08:53:24 9 THE COURT: RIGHT. SO IF I TAKE OUT THE INITIAL
08:53:25 10 DESIGNATION TO ALL THE -- DOES THE OBJECTION GO AWAY ON THE
08:53:29 11 COUNTERS?

08:53:30 12 MR. PAK: YES. AND THE COUNTERS AS WELL I THINK WE
08:53:34 13 CAN WITHDRAW THE COUNTERS.

08:53:35 14 MR. VAN NEST: WHICH COUNTERS ARE BEING WITHDRAWN?

08:53:37 15 MR. PAK: YES, SO LET ME MAKE CLEAR.

08:53:40 16 AS I UNDERSTAND YOUR HONOR'S RULING YOU ARE SUSTAINING THE
08:53:42 17 OBJECTIONS TO PAGE 39, LINE 1 TO PAGE 39, LINE 9.

08:53:45 18 THE COURT: CORRECT.

08:53:46 19 MR. PAK: AS A RESULT, WE ARE WITHDRAWING OUR COUNTER
08:53:49 20 TO -- AT PAGE 74, LINE 23 TO PAGE 77, LINE 6.

08:53:56 21 PAGE 77, LINE 10 TO PAGE 77, LINE 13.

08:54:00 22 AND, FINALLY, PAGE 77, LINE 21 TO PAGE 78, LINE 3.

08:54:07 23 MR. VAN NEST: LINE WHAT?

08:54:08 24 MR. PAK: LINE 3.

08:54:09 25 THE COURT: OKAY.

08:54:11 1 THEN THE NEXT OBJECTION IS PAGE 39, LINE 12 TO 40, LINE 8.
08:54:17 2 I WILL SUSTAIN THAT OBJECTION AS THE WITNESS SHOWED NO PERSONAL
08:54:22 3 KNOWLEDGE, AND I PRESUME THAT WILL CAUSE THE OBJECTION TO THE
08:54:27 4 COUNTER DESIGNATIONS TO BE WITHDRAWN?

08:54:29 5 MR. PAK: THAT'S CORRECT, YOUR HONOR.

08:54:31 6 MR. VAN NEST: WHICH ONES?

08:54:32 7 MR. PAK: AND, AGAIN, IT'S JUST THE SAME THREE THAT I
08:54:35 8 HAD STATED FOR PAGE 39, CROSS-REFERENCED.

08:54:39 9 THE COURT: THE NEXT OBJECTION IS PAGE 43, LINE 3 TO
08:54:42 10 43, LINE 17. I WILL SUSTAIN THAT OBJECTION.

08:54:45 11 ALSO LACK OF PERSONAL KNOWLEDGE, AND, THEREFORE, I PRESUME
08:54:48 12 THAT THE COUNTER DESIGNATION WILL BE WITHDRAWN.

08:54:51 13 MR. PAK: YES, YOUR HONOR.

08:55:01 14 THE COURT: WELL, NOW WE HAVE TO ACTUALLY -- NOW YOU
08:55:04 15 HAVE A COUNTER DESIGNATION TO ONE THAT WAS NOT OBJECTED TO,
08:55:07 16 PAGE 44, LINE 10 TO 44, 13. LET ME JUST OPEN THAT UP.

08:55:40 17 AND THIS WAS THE PRIMARY DESIGNATION, IT HAD TO DO WITH
08:55:46 18 WHETHER JUNIPER ASKED CISCO FOR PERMISSION TO COPY, OR TO USE
08:55:53 19 CLI COMMANDS, AND I DIDN'T UNDERSTAND HOW THESE COUNTER
08:55:56 20 DESIGNATIONS RELATED, MR. PAK.

08:55:58 21 MR. PAK: YES, LET ME -- SO I THINK WE ARE TALKING
08:56:00 22 ABOUT PAGE 44, STARTING AT LINE 10.

08:56:03 23 THE COURT: CORRECT.

08:56:04 24 MR. PAK: AND THEN OUR DESIGNATIONS WERE TO --

08:56:08 25 THE COURT: WELL, THESE ARE THE ONES THAT YOU HAVE

08:56:10 1 BEEN WITHDRAWING, SO NOW WE'VE GOT TO DECIDE IT.

08:56:13 2 MR. PAK: SO, YOUR HONOR, I THINK WE ARE HAPPY TO
08:56:15 3 WITHDRAW THOSE AS WELL.

08:56:16 4 THE COURT: OKAY.

08:56:19 5 MR. VAN NEST: SAME ONES?

08:56:21 6 THE COURT: YES.

08:56:22 7 MR. VAN NEST: OR SAME COUNTERS THAT YOU HAVE BEEN
08:56:24 8 WITHDRAWING?

08:56:25 9 MR. PAK: LET ME JUST TAKE ONE MORE LOOK HERE.

08:56:28 10 THE COURT: ALL RIGHT. NOW, THE NEXT SERIES, AND
08:56:32 11 ACTUALLY THE FINAL THREE PRIMARY OBJECTIONS, I HAD REAL
08:56:39 12 CONCERNS ABOUT THE LAY OPINION PROBLEM IMBEDDED IN THE
08:56:42 13 WITNESS'S TESTIMONY BECAUSE I CAN'T TELL WHAT LEVEL OF PERSONAL
08:56:49 14 KNOWLEDGE THIS WITNESS HAS REGARDING HOW STANDARD THESE MODES
08:56:55 15 WERE INVOLVING -- WELL, THEY ARE ALL OF THE MODES AT ISSUE IN
08:57:00 16 THE CASE, ESSENTIALLY. I JUST COULDN'T -- I DIDN'T SEE IT.

08:57:08 17 SO YOU HAVE TO HELP ME OUT. AND IT WAS OBVIOUSLY IN THE
08:57:14 18 BACKGROUND TESTIMONY HE GAVE, I SUPPOSE, BUT IT WASN'T RIGHT
08:57:17 19 AROUND THE DESIGNATED PORTIONS, SO I COULDN'T FIND IT.

08:57:21 20 MR. SANTACANA: YES, YOUR HONOR. AND MR. KASTEN
08:57:25 21 WORKS WITH JUNOS E, SO HIS TESTIMONY ABOUT WHICH COMMAND MODES
08:57:29 22 ARE IN THE JUNIPER SOFTWARE, I THINK THERE'S A CLEAR FOUNDATION
08:57:33 23 FOR THAT.

08:57:33 24 SO IS THAT YOUR QUESTION OR ARE YOU ASKING MORE ABOUT --

08:57:36 25 THE COURT: WELL, IN ORDER FOR HIM TO GIVE A -- HE'S

08:57:40 1 IN A POSITION THAT IT'S NOT UNREASONABLE THAT HE COULD PROPERLY
08:57:46 2 GIVE A LAY OPINION, THAT'S NOT REALLY A PROBLEM SO I JUST HAVE
08:57:49 3 TO BE SATISFIED THAT HE'S PERSON, AND I JUST COULDN'T FIND
08:57:52 4 THAT.

08:57:52 5 SO THAT'S THE NATURE OF THE OBJECTION, AND I JUST WANT TO
08:57:55 6 BE SATISFIED THAT IT'S APPROPRIATE BECAUSE HE MAKES SOME PRETTY
08:57:57 7 BROAD STATEMENTS.

08:57:58 8 MR. VAN NEST: YOUR HONOR, EARLY ON IN THIS
08:58:00 9 DESIGNATION THIS WAS THE GUY THAT WORKED WITH ALL OF THIS SAME
08:58:03 10 SET OF STUFF THROUGH THREE COMPANIES.

08:58:05 11 THE COURT: YEAH.

08:58:05 12 MR. VAN NEST: I MEAN, HE WAS STARTING WITH, I THINK
08:58:07 13 THE FIRST ONE WAS REDBACK OR ONE OF THOSE, THEN THAT'S
08:58:11 14 ACQUIRED, AND HE CONTINUES SELLING THE SAME PRODUCT.

08:58:15 15 THEN HE'S ACQUIRED AGAIN BY JUNIPER, AND THEY KEEP SELLING
08:58:19 16 THE SAME PRODUCT, AND HE TESTIFIES ABOUT THE FACT THAT HE'S THE
08:58:21 17 ONE RESPONSIBLE FOR KNOWLEDGE ABOUT HOW THESE PRODUCTS ARE
08:58:24 18 CREATED.

08:58:25 19 THE COURT: SURE.

08:58:25 20 MR. VAN NEST: HE TALKED ABOUT HOW THEY GO ABOUT
08:58:27 21 SELECTING COMMANDS AND SO ON AND HE TALKS ABOUT
08:58:31 22 INTEROPERABILITY AND ALL OF THAT IS COMING IN.

08:58:33 23 AND ALL OF THIS IS CLOSELY RELATED ONCE YOU HAVE A SET OF
08:58:38 24 COMMANDS, RIGHT? YOU HAVE TO DECIDE, YOU HAVE ONE MODE OR YOU
08:58:41 25 HAVE TWO MODES.

08:58:42 1 THIS IS THE GUY OUT THERE WITH THE PRODUCT SELLING IT. HE
08:58:45 2 CLEARLY HAS A BASIS OF FOUNDATION FOR ALL OF THIS. BUT, OF
08:58:49 3 COURSE, THAT'S ESTABLISHED EARLIER IN THE DEPOSITION AND NOT
08:58:51 4 RIGHT HERE. WE ARE GOING ON --

08:58:53 5 THE COURT: THAT'S WHY I'M ASKING YOU TO FILL IT IN
08:58:55 6 FOR ME.

08:58:56 7 MR. VAN NEST: THIS GUY, AMONG THE PEOPLE THAT ARE
08:58:58 8 DESIGNATED, THIS GUY IS THE GUY WITH THE LONGEST HISTORY OF
08:59:02 9 JUST ABOUT ANYBODY WITH A SINGLE PRODUCT THROUGH TWO OR THREE
08:59:04 10 COMPANIES.

08:59:05 11 THE COURT: RIGHT.

08:59:06 12 MR. VAN NEST: AND SELLING IT, DEVELOPING IT, HOW
08:59:08 13 THEY DID IT.

08:59:08 14 SO THE MODES, I RECOGNIZE I DISCUSSED LATER ON, BUT
08:59:11 15 OBVIOUSLY --

08:59:12 16 THE COURT: SO HERE'S MY CONCERN --

08:59:13 17 MR. VAN NEST: HE'S THE PERSON.

08:59:15 18 THE COURT: -- AT PAGE 83, HE GIVES THIS TESTIMONY
08:59:18 19 ABOUT INDUSTRY STANDARDS IS A VAGUE TERM, WITHOUT ANY
08:59:24 20 BOUNDARIES TO IT, WHICH, OF COURSE, HAS BEEN A PROBLEM I'VE HAD
08:59:27 21 IN THIS LITIGATION AS WELL.

08:59:29 22 MR. PAK: YES.

08:59:29 23 THE COURT: AND SO THAT'S WHERE I GOT TO BE CONCERNED
08:59:34 24 ABOUT HIS TESTIMONY.

08:59:37 25 MR. VAN NEST: THAT'S THEIR COUNTER, YOUR HONOR,

08:59:39 1 THAT'S NOT SOMETHING --

08:59:40 2 THE COURT: NO, BUT I HAVE TO FIND A FOUNDATION FOR
08:59:43 3 THIS WITNESS'S TESTIMONY. AND SO I HAVE TO LOOK AT THE OTHER
08:59:45 4 THINGS HE SAID TO DETERMINE WHETHER HE ACTUALLY CAN GIVE A LAY
08:59:50 5 OPINION. AND IT'S -- I DON'T WANT TO TAKE A RESTRICTIVE VIEW
08:59:54 6 ON THE SCOPE OF LAY OPINION FOR PEOPLE LIKE THIS WHO BASICALLY
08:59:57 7 INVENTED THE WHOLE THING. BUT I JUST NEED TO SEE IT.

09:00:01 8 AND SO, YES, THIS IS A COUNTER DESIGNATION TO OTHER
09:00:04 9 THINGS, BUT I HAD READ, AND, THEREFORE, SHOULDN'T HAVE TO
09:00:07 10 IGNORE THE FACT THAT HE TESTIFIES THAT INDUSTRY STANDARD IS A
09:00:13 11 VAGUE TERM SINCE IT DOESN'T MEAN SOMETHING SPECIFIC. THERE CAN
09:00:17 12 BE MORE THAN ONE, BY MANY, I SHOULD HAVE PERHAPS, IF I SAID
09:00:20 13 MANY, I MEAN MORE THAN ONE. IT'S VAGUE. IT'S A VAGUE TERM.

09:00:24 14 SO I THINK THAT'S REALLY HONEST AND CANDID, OF COURSE IT
09:00:27 15 IS, BECAUSE HE'S TALKING ABOUT THE BROADER SCOPE OF INDUSTRY
09:00:32 16 STANDARD, MORE LIKE WHAT YOU INITIALLY CALLED OR DR. BLACK
09:00:35 17 CALLED THE DE FACTO STANDARD. IT'S WHAT PEOPLE IN THE INDUSTRY
09:00:43 18 COMMONLY UNDERSTOOD WAS OUT THERE. AND SO IT'S IN THE PUBLIC
09:00:47 19 DOMAIN, IT WOULD BE MORE, MAYBE --

09:00:50 20 MR. VAN NEST: THAT'S WHAT THIS IS ABOUT. I MEAN,
09:00:52 21 HE'S -- WE ARE NOT OFFERING HIM FOR ANYTHING ELSE. THEY'VE
09:00:55 22 COUNTERED THIS, FINE. I MEAN, IT GIVES CONTEXT TO THE
09:00:58 23 TESTIMONY.

09:00:59 24 BUT, AGAIN, THIS IS A PERSON OUT THERE NOT ONLY DEVELOPING
09:01:03 25 THE PRODUCT BUT SELLING IT AND OUT IN THE MARKET AND

09:01:06 1 UNDERSTANDING WHERE THEY GET THESE COMMANDS AND HOW THEY GET
09:01:10 2 THEM.

09:01:11 3 AND I JUST DON'T SEE ANY DIFFERENCE IN HIS OPINIONS ABOUT
09:01:13 4 THE MODES THAN HIS STATEMENTS ABOUT HOW THEY DESIGNED THE
09:01:16 5 COMMANDS THEMSELVES, THAT'S ALL -- THAT'S WHY I THINK THERE'S
09:01:21 6 PLENTY OF FOUNDATION FOR IT.

09:01:23 7 THE COURT: OKAY.

09:01:24 8 MR. PAK: I THINK THERE ARE TWO ISSUES GOING ON AND
09:01:25 9 THIS IS REFLECTED I THINK IN OUR RESPONSE. THERE'S SPECIFIC
09:01:29 10 QUESTIONS IN ARISTA'S DESIGNATIONS THAT GO TO, DID JUNOS E HAVE
09:01:34 11 THESE MODES AND PROMPTS? AND CLEARLY THERE'S FOUNDATION LAID
09:01:37 12 FOR THAT. HE DID WORK WITH THIS PRODUCT ACROSS DIFFERENT
09:01:40 13 COMPANIES.

09:01:41 14 WHERE WE HAVE SOME ISSUES, THOUGH, IS EXACTLY THE TYPES OF
09:01:44 15 QUESTIONS THAT YOUR HONOR IS SEEING WHERE THEY THEN TRANSITION
09:01:47 16 TO QUESTIONS ABOUT IS THIS TYPICAL IN THE INDUSTRY? IS THIS
09:01:50 17 INDUSTRY STANDARD?

09:01:50 18 AND REALLY, I DON'T SEE A FOUNDATION WHERE HE'S DONE AN
09:01:53 19 ANALYSIS OF OTHER VENDORS'S COMMANDS OR MODES AND PROMPTS, AND
09:01:58 20 HE ADMITS THAT INDUSTRY STANDARD COULD HAVE MULTIPLE MEANING.
09:02:03 21 WE HAD LOTS OF INTERPRETATIONS OF THAT MEANING IN THE TRIAL.

09:02:08 22 WE DON'T HAVE OBJECTIONS. FOR EXAMPLE, ON PAGE 63,
09:02:12 23 LINE 20 WHICH THE QUESTION WAS, "DOES JUNOS E SUPPORT AN
09:02:16 24 INTERFACE CONFIGURATION MODE?

09:02:17 25 ANSWER: YES, IT DOES."

09:02:19 1 THAT'S FINE. HE HAS FOUNDATION FOR THAT.

09:02:21 2 BUT WHERE WE GET INTO THE NEXT ONE IS, "AND THE INTERFACE
09:02:27 3 CONFIGURATION MODE, ONE THAT'S STANDARD IN THE INDUSTRY,"
09:02:32 4 THAT'S WHERE WE START TO GET INTO --

09:02:34 5 THE COURT: THAT'S WHERE I DON'T SEE THE FOUNDATION.
09:02:38 6 I NORMALLY EXPECT AN EXPERT TO TESTIFY ON THAT, BUT HERE'S
09:02:41 7 SOMEONE -- I JUST DON'T SEE THE FOUNDATION FOR HIM SAYING I
09:02:44 8 KNOW WHAT THE INDUSTRY STANDARDS ARE.

09:02:46 9 MR. VAN NEST: WHAT HE SAYS, YOUR HONOR, IS THAT IN
09:02:48 10 DESIGNING COMMANDS, THEY GO TO BOOKS, THEY GO TO REFERENCES,
09:02:53 11 THEY FIND THESE THINGS IN BOOKS, THEY ARE CISCO COMMANDS, BUT
09:02:57 12 THEY ARE PUBLISHED BY OTHERS. THIS IS ALL A PART OF DEVELOPING
09:03:01 13 THE COMMANDS IN THE RELATED MODES AND PROMPTS.

09:03:05 14 SO, YEAH, HE SAYS IT'S SORT OF A VAGUE TERM, BUT REMEMBER
09:03:08 15 WE'VE GOT WILFULNESS AT ISSUE, WE'VE GOT GOOD FAITH AT ISSUE,
09:03:12 16 OUR WITNESSES.

09:03:13 17 THE COURT: WE DON'T HAVE WILFULNESS AT ISSUE.

09:03:15 18 MR. VAN NEST: WELL, WE HAVE GOOD FAITH, BAD FAITH AT
09:03:18 19 ISSUE, AND OUR WITNESSES HAVE ALL SAID AND THE ONES THAT HAVE
09:03:22 20 TESTIFIED SO FAR THAT WE THOUGHT THESE WERE FAIR TO USE AND
09:03:25 21 FREE TO USE AND WERE OUT THERE BEING PROMOTED AS STANDARDS, AND
09:03:32 22 HERE'S SOMEONE ELSE WHO ALSO BELIEVES THESE ARE FAIR TO USE
09:03:37 23 BECAUSE THEY'RE OUT THERE AND ARE GENERALLY STANDARD.

09:03:40 24 THEY HAVE DESIGNATED TESTIMONY TO IMPEACH WHATEVER
09:03:42 25 QUALIFICATIONS HE HAS, BUT THERE'S PLENTY OF FOUNDATION FOR

09:03:45 1 THIS WITNESS AS THE PERSON WHO WAS INVOLVED DESIGNING THE
09:03:49 2 SYSTEM THROUGH THREE DIFFERENT COMPANIES AND FIGURING OUT WHERE
09:03:52 3 TO GET THE COMMANDS THAT HE'S GOING TO USE. IT'S ALL PART AND
09:03:55 4 PARCEL OF THAT.

09:03:56 5 SO I THINK THIS IS ALL FOR THE JURY'S CONSIDERATION. WE
09:03:59 6 ARE NOT OFFERING HIM AS AN EXPERT, HE'S A LAY WITNESS. AND
09:04:02 7 HE'S MAYBE MORE AUTHENTIC BECAUSE HE'S OUT THERE IN THE FIELD
09:04:06 8 DOING THE WORK.

09:04:07 9 THE COURT: SO I GUESS HERE'S MY CONCERN IS THAT --
09:04:12 10 MY REAL CONCERN IS THE, THE DESIGNATION STARTS AT LINE 13 ON
09:04:17 11 PAGE 62, BUT THE QUESTION IS WHAT SHAPES IT. IT'S A VERY BROAD
09:04:21 12 QUESTION. ARE THERE CERTAIN COMMAND MODES THAT ARE STANDARD IN
09:04:25 13 THE INDUSTRY?

09:04:25 14 THAT'S BROAD.

09:04:31 15 NOW, TO THE EXTENT THE WITNESS IS DESCRIBING JUNIPER'S
09:04:34 16 PROCESS OR THESE PREDECESSOR'S COMPANY'S PROCESS OF LOOKING IN
09:04:41 17 BOOKS, LOOKING AND CREATING THINGS TO PICK UP PRE-EXISTING
09:04:44 18 PUBLIC DOMAIN ASPECTS, THAT'S FINE. HE'S ACTUALLY NOT TALKING
09:04:47 19 ABOUT WHAT HE DESIGNED AT JUNIPER OR REDSTONE OR THE OTHER
09:04:52 20 PREDECESSORS.

09:04:53 21 THIS IS A VERY BIG STATEMENT, AND THAT'S WHY I THINK IT'S
09:04:56 22 BEYOND THE SCOPE OF LAY OPINION.

09:04:57 23 NOW, WE CAN GO ON TO THE OTHER ONES, SO THAT'S 13 TO 19.
09:05:02 24 AND THEN WE GO ON TO 63-5. AND THE QUESTION IS, AND IS THAT --
09:05:09 25 IS THE GLOBAL CONFIGURATION MODE ONE THAT'S TYPICAL IN THE

09:05:13 1 INDUSTRY?

09:05:14 2 NOW, I'M NOT -- I ASSUME HE'S LOOKING AT CISCO'S GLOBAL
09:05:18 3 CONFIGURATION MODE?

09:05:19 4 MR. VAN NEST: YES.

09:05:20 5 THE COURT: AND I PRESUME THIS IS OFFERED TO COUNTER
09:05:23 6 MR. LOUGHEED SAYING THAT GLOBAL CONFIGURATION MODE WAS UNIQUE
09:05:28 7 AND CREATIVE TO CISCO?

09:05:31 8 MR. VAN NEST: YES.

09:05:32 9 MR. PAK: I DON'T THINK SO BECAUSE THIS IS ANOTHER
09:05:34 10 AREA THAT'S REALLY CONFUSING. AND I THINK YOUR HONOR DEALT
09:05:38 11 WITH THIS IN THE MOTION IN LIMINE WHEN WE HAD YOUR HONOR
09:05:42 12 EXCLUDE EXPERTS FROM USING VAGUE WORDS LIKE DE FACTO STANDARD.

09:05:47 13 AND NOW THOSE ARE EXPERTS WHERE THEY HAD DONE, SOMEONE
09:05:52 14 ELSE, WE HAVE SOMEBODY ELSE WHO HAS DONE NO ANALYSIS WHO IS A
09:05:55 15 LAY WITNESS, HE DOESN'T HAVE FOUNDATION FOR THIS, AND IT'S VERY
09:05:59 16 CONFUSING TO THE JURY BECAUSE AS WE KNOW THERE ARE TWO ISSUES.
09:06:02 17 THERE'S ORIGINALITY, WHICH IS MEASURED AT THE TIME OF CREATION.

09:06:08 18 MR. LOUGHEED'S TESTIMONY WAS, AT THE TIME WE CREATED THESE
09:06:12 19 MODES THERE WAS NOTHING LIKE IT.

09:06:13 20 THE COURT: DON'T KNOW WHAT TIMEFRAME HE'S TALKING
09:06:15 21 ABOUT HERE, I COULDN'T GLEAN THAT.

09:06:17 22 MR. PAK: AND SO I DON'T BELIEVE THAT ANYONE HAS
09:06:20 23 FOUND ANY EVIDENCE TO SHOW THAT, IN FACT, THESE MODES EXISTED
09:06:23 24 PRIOR TO MR. LOUGHEED, AND I DON'T THINK THIS WITNESS HAS ANY
09:06:27 25 FOUNDATION TO GO BACK TO 1986 TO TALK ABOUT THESE MODES AND

PROMPTS.

SO THIS IS HIGHLY CONFUSING TESTIMONY. AGAIN, IF HE WANTS
TO TIE IT TO A SPECIFIC PRODUCT --

THE COURT: IS THERE A TIMEFRAME THAT HE'S TALKING
ABOUT, MR. VAN NEST?

MR. VAN NEST: HE TALKS -- THIS IS NOT OFFERED
NECESSARILY TO COUNTER WHAT MR. LOUGHEED SAID. HE'S SELLING
CONTEMPORANEOUS WITH OUR TIME PERIOD HERE IN THE LATER 2008 AND
AFTER WE ARE OUT THERE ON THE MARKET. HE'S TALKING ABOUT THE
PERIOD MORE RECENTLY, RIGHT, WHICH IS THE DAMAGES PERIOD AND
THE PERIOD OF INFRINGEMENT.

BUT, YOUR HONOR, I POINT OUT HERE AGAIN ON PAGE 63, HE'S
TYING THESE MODES RIGHT TO THESE, TO THE BOOKS THAT HE'S
GETTING THE COMMANDS OUT OF.

YOU KNOW, THERE AT PAGE 63, LINE 5, AGAIN, AS I MENTIONED
EARLIER, ONE OF THE THINGS THAT GUIDED US WAS FOR EXAMPLE, WHAT
A REASONABLE PERSON, HOW A REASONABLE PERSON WOULD BECOME AWARE
OF THE COMMANDS NECESSARY TO PERFORM OPERATIONS LIKE
CONFIGURATION ON NETWORKING GEAR.

SO GLOBAL CONFIG MODE IS ONE THAT WOULD HAVE APPEARED IN
NETWORKING BOOKS IN LOCAL BOOK STORES.

SO LIKE THE OTHER COMMANDS ASSOCIATED WITH THE CLI, I
WOULD SAY THE COMMAND TO PUT YOU INTO THE GLOBAL CONFIG MODE,
WHICH IS JUST CONFIGURE, ET CETERA, ET CETERA, WERE TYPICAL.

HIS FOUNDATION IS HE CREATES THESE, THEY ARE IN BOOKS,

09:07:55 1 THEY ARE GETTING THEM FROM BOOKS, AND THE BOOKS ARE REFLECTING
09:07:58 2 WHAT REASONABLE NETWORKING ENGINEERS UNDERSTOOD. IT'S NOT THE
09:08:03 3 TIME -- HIS TIME PERIODS ARE ESTABLISHED BY WHEN HE WORKED AT
09:08:08 4 THESE COMPANIES AND IT'S NOT BEFORE LOUGHEED.

09:08:10 5 MR. PAK: IT DOESN'T SAY THAT IN --

09:08:12 6 THE COURT: I'M SORRY, I JUST DIDN'T HAVE THE TIME TO
09:08:14 7 READ THE WHOLE DEPOSITION, THAT'S WHY I'M ASKING YOU TO HELP ME
09:08:17 8 OUT. THAT'S ALL IT IS.

09:08:18 9 MR. VAN NEST: YEAH, THAT'S WHAT I'M SAYING. IS THE
09:08:20 10 TIME PERIODS WE ARE TALKING ABOUT --

09:08:24 11 THE COURT: IS PRE-CISCO?

09:08:24 12 MR. VAN NEST: IT'S PER THE INFRINGEMENT PERIOD OF
09:08:26 13 THE CASE.

09:08:27 14 THE COURT: SO IT'S NOT RELEVANT TO CREATIVITY.

09:08:29 15 MR. VAN NEST: IT'S RELEVANT TO --

09:08:31 16 THE COURT: IT'S RELEVANT --

09:08:32 17 MR. VAN NEST: IT'S RELEVANT TO WHAT'S COMMONLY USED
09:08:36 18 AND COMMON USAGE IN THE INDUSTRY DURING THE PERIOD --

09:08:38 19 THE COURT: THIS HAS BECOME A PROBLEM THAT WE GOT
09:08:42 20 INTO THAT THIS MAY ESTABLISH THAT WHAT CISCO DOES HAS BECOME SO
09:08:47 21 POPULAR THAT IT'S IN BOOKS, BUT IF IT'S PREVIOUSLY COPYRIGHTED
09:08:49 22 AND PROTECTABLE, THEN THIS COPYING DOESN'T BECOME FREE JUST
09:08:52 23 BECAUSE EVERYBODY IS DOING IT.

09:08:54 24 I MEAN, THAT'S -- SO THAT'S WHY THE TIMEFRAME IS IMPORTANT
09:08:56 25 HERE. I THOUGHT YOU WERE OFFERING IT TO ESTABLISH THAT THESE

09:09:00 1 MODES AND PROMPTS WERE KNOWN IN THE INDUSTRY BEFORE CISCO USED
09:09:03 2 THEM. AND THAT'S NOT -- THAT'S WHY I'M FOCUSING ON THE TIME
09:09:07 3 PERIOD.

09:09:07 4 AND TO THE EXTENT THAT HE'S TESTIFYING ABOUT A DATE, A
09:09:10 5 PERIOD OF TIME AFTER CISCO DEVELOPED IT, THEN THIS -- I DON'T
09:09:14 6 EVEN KNOW WHAT THIS IS RELEVANT TO, BUT I DON'T WANT THIS JURY
09:09:18 7 TO THINK THAT JUST BECAUSE EVERYBODY WAS USING IT, THAT CISCO
09:09:22 8 HAD GIVEN IT AWAY.

09:09:23 9 MR. VAN NEST: WELL, OF COURSE WE HAVE AN ABANDONMENT
09:09:27 10 CLAIM.

09:09:27 11 THE COURT: YES, I UNDERSTAND IS THAT.

09:09:29 12 MR. VAN NEST: AND THAT CISCO WAS LETTING EVERYONE
09:09:31 13 USE IT AND WAS AWARE OF THAT --

09:09:33 14 THE COURT: BUT THAT'S NOT GOING TO THE JURY,
09:09:35 15 ABANDONMENT, IS IT?

09:09:37 16 MR. VAN NEST: YES.

09:09:37 17 THE COURT: IT WASN'T ON YOUR VERDICT FORM WHEN I WAS
09:09:39 18 LOOKING AT IT, SO I WAS CONFUSED LAST NIGHT, BUT --

09:09:43 19 MR. VAN NEST: IT IS, YOUR HONOR.

09:09:43 20 THE COURT: WELL, IF IT'S GOING TO ABANDONMENT AND
09:09:46 21 THAT'S GOING TO THE JURY, I WOULD LET IT IN WITH A SPECIAL
09:09:49 22 INSTRUCTION LETTING THE JURY KNOW THAT IT'S LIMITED THAT WAY.

09:09:57 23 MR. VAN NEST: WELL, I THINK IT'S NOT LIMITED TO
09:09:59 24 ABANDONMENT, YOUR HONOR.

09:10:01 25 IF HE'S TESTIFYING THAT THERE ARE BOOKS OUT THERE AND THE

09:10:05 1 NETWORK INDUSTRY FOLKS ALL USING THE SAME SETS OF COMMANDS, IT
09:10:09 2 GOES TO WHAT'S COMMON, AND COMMON USAGE, WHETHER YOU CALL IT
09:10:13 3 INDUSTRY PRACTICE OR NOT, COMMON USAGE IS CERTAINLY RELEVANT TO
09:10:16 4 OUR GOOD FAITH, IT'S CERTAINLY RELEVANT TO FAIR USE. AND IT'S
09:10:21 5 CERTAINLY RELEVANT TO DAMAGES, OF COURSE. IT'S RELEVANT TO A
09:10:25 6 LOT OF ISSUES, SO I DON'T THINK IT'S NECESSARILY --

09:10:28 7 THE COURT: WELL, AGAIN, I'M ONLY GOING TO ALLOW THIS
09:10:31 8 IN IF IT IS -- I'M GOING TO INVITE CISCO TO PREPARE A SPECIAL
09:10:37 9 INSTRUCTION, AND THEN I CAN LET IT IN SO YOU CAN HAVE IT FOR
09:10:39 10 THOSE ISSUES.

09:10:40 11 BUT I JUST WANT TO MAKE SURE THIS JURY DOESN'T THINK THAT
09:10:43 12 BECAUSE CISCO'S CLI BECAME POPULAR, THAT THAT ALONE CAUSED IT
09:10:49 13 TO BE GIVEN AWAY. THAT'S NOT YOUR ARGUMENT. AND I WANT THE
09:10:52 14 JURY TO BE UNDERSTANDING THAT AS WELL.

09:10:55 15 SO I WILL -- I GUESS THEN TO BE CONSISTENT I NEED TO, I'M
09:11:02 16 GOING TO TAKE THE, STARTING AT PAGE 62, LINE 13 AND THESE
09:11:09 17 REMAINING THREE OBJECTIONS SPANNING PAGES 62 AND 63 AND 64, I
09:11:14 18 WILL OVERRULE THE OBJECTION AND ALLOW A SPECIAL INSTRUCTION.

09:11:21 19 MR. VAN NEST: THANK YOU, YOUR HONOR.

09:11:21 20 MR. PAK: AND, YOUR HONOR, JUST TO BE -- I THINK
09:11:25 21 THERE ARE -- I APPRECIATE YOUR HONOR'S INSTRUCTION VERY MUCH.

09:11:27 22 BUT THE QUESTION THAT WE WERE JUST LOOKING AT ON PAGE 63
09:11:30 23 USES THE WORD "TYPICAL" IN THE INDUSTRY. THE OTHER QUESTIONS
09:11:35 24 THAT WE OBJECTED TO USE THE WORD INDUSTRY "STANDARD" OR
09:11:39 25 "STANDARD" IN THE INDUSTRY, AND I THINK THAT DOES RAISE SOME OF

09:11:42 1 THE CONCERNS THAT WE HAVE BEEN HAVING ABOUT WHETHER IT'S IN THE
09:11:44 2 CONTEXT OF THE MOTION IN LIMINE OR HIS OWN TESTIMONY THAT THE
09:11:49 3 WORD "STANDARD" IS VAGUE.

09:11:50 4 THE COURT: WELL, I WILL ALLOW THE EXPERT TO USE DE
09:11:53 5 FACTO STANDARD. INDUSTRY STANDARD I'M NOT KEEPING OUT OF THE
09:11:56 6 TRIAL AND IT'S BEEN THROUGHOUT. BUT IT WAS THE DE FACTO
09:12:00 7 BECAUSE I DIDN'T FEEL HE HAD SUFFICIENT FOUNDATION. SO I THINK
09:12:02 8 THIS SHOULD GIVE YOU --

09:12:04 9 MR. PAK: OKAY. I APPRECIATE THAT.

09:12:06 10 THE COURT: SUFFICIENT BALANCE IN RULING, SO WE WILL
09:12:10 11 PREPARE THAT LIMITING INSTRUCTION IF THEY WANT TO PUT THIS IN.
09:12:14 12 THANK YOU VERY MUCH.

09:12:14 13 MR. VAN NEST: YOUR HONOR, BEFORE WE BRING THE JURY
09:12:15 14 IN, JUST A COUPLE HOUSEKEEPING HEADS UP AND GET YOUR HONOR'S
09:12:19 15 INSTRUCTION.

09:12:19 16 THE COURT: YES.

09:12:20 17 MR. VAN NEST: I EXPECT THAT AFTER MR. CHAMBERS,
09:12:23 18 CISCO IS GOING TO REST, SUBJECT TO CALLING MR. SHAFER TOMORROW.

09:12:28 19 THE COURT: OKAY.

09:12:28 20 MR. VAN NEST: AND WE'VE ALL AGREED ON THAT.

09:12:30 21 THE COURT: OKAY.

09:12:30 22 MR. VAN NEST: IT WAS OUR INTENTION NOT TO MAKE A
09:12:32 23 JUDGMENT AS A MATTER OF LAW MOTION UNTIL LATER IN THE WEEK WHEN
09:12:36 24 ALL THE CASE WAS DONE. I'M NOT SURE WHEN EXACTLY WE WILL BE
09:12:40 25 DONE WITH SHAFER, AND THERE MAY BE SOME OTHER OPEN ISSUES WHERE

09:12:44 1 I'VE SAID, YES, YOU CAN DO THAT IN MY CASE.

09:12:46 2 SO UNLESS YOUR HONOR HAS A DIFFERENT REQUIREMENT OR
09:12:49 3 SUGGESTION, WE WILL WAIT UNTIL THE END OF THE WEEK, AND WE WILL
09:12:52 4 FILE OUR MOTION FOR JUDGMENT AS A MATTER OF LAW THEN ON
09:12:55 5 WHATEVER ISSUES SEEM APPROPRIATE.

09:12:57 6 THE COURT: OKAY. I WANT TO MAKE SURE THAT YOU HAVE
09:13:00 7 THE OPPORTUNITY TO PRESERVE YOUR RECORD IN THE WAY YOU THINK IS
09:13:05 8 BEST.

09:13:06 9 SO IF YOU WOULD LIKE TO MAKE A PLACE HOLDER MOTION THAT'S
09:13:11 10 SOMEWHAT CRYPTIC FOR THE JURY BECAUSE YOU THINK THAT'S
09:13:14 11 NECESSARY, THEN BY ALL MEANS DO IT.

09:13:16 12 BUT, YES, YOUR BRIEFING ON IT AND SUBMISSION TO ME CAN BE
09:13:18 13 AT THE END OF ALL OF CISCO'S EVIDENCE.

09:13:20 14 MR. VAN NEST: RIGHT. I DON'T THINK WE NEED TO MAKE
09:13:22 15 THE PLACE HOLDER EARLIER, AND GIVEN THE WAY THE CASE IS
09:13:25 16 DEVELOPING IT WILL BE FINE TO DO IT AT THE END OF THE WEEK.
09:13:28 17 BUT WE WILL FILE IT THEN WHEN THE REBUTTALS ARE CLOSED.

09:13:33 18 THE COURT: OKAY. MR. NELSON, YOU DON'T OBJECT TO
09:13:35 19 THAT?

09:13:35 20 MR. NELSON: NO, YOUR HONOR. RULE 50 ADJUST REQUIRES
09:13:37 21 A MOTION BEFORE IT'S SUBMITTED TO THE JURY. SO THE TIMING ON
09:13:41 22 THAT IT FINE.

09:13:42 23 MR. VAN NEST: THE OTHER THING IS IN LIGHT OF
09:13:44 24 YOUR HONOR'S E-MAIL ON THE VERDICT FORM AND SO ON, THE PARTIES
09:13:47 25 ARE MEETING AND CONFERRING AND EXCHANGING FORMS. I THINK WE

09:13:51 1 WOULD AIM TO BE ABLE TO GET YOU A FORM CLOSE OF BUSINESS
09:13:53 2 TOMORROW.

09:13:55 3 THE COURT: OH, THAT'S WONDERFUL.

09:13:56 4 MR. VAN NEST: TUESDAY. AND THE OBJECTION ARGUMENTS
09:14:00 5 HAVE NARROWED SOME AND THERE'S A FAMOUS JURY INSTRUCTION 39-41.
09:14:04 6 WOULD YOUR HONOR ENTERTAIN A BRIEF ON THAT ISSUE ON JURY
09:14:10 7 INSTRUCTION ISSUES?

09:14:11 8 THE COURT: MAYBE I CAN CUT THROUGH IT OR MAYBE YOU
09:14:12 9 WILL REALIZE YOU NEED TO DO SOME BRIEFING ON IT. ONE OF THE
09:14:16 10 MAIN ISSUES THERE WAS WHETHER THE COMPARISON WAS TO WORK AS A
09:14:19 11 WHOLE.

09:14:20 12 AND I'VE DETERMINED THAT IT IS. I AGREED WITH THE
09:14:23 13 ARGUMENT THAT YOU MADE IN OUR INITIAL DISCUSSION. EACH SIDE
09:14:29 14 GAVE ME THREE CASES TO LOOK AT PRIMARILY. I LOOKED AT THOSE.
09:14:33 15 I'M GOING TO HAVE AN ORDER THAT'S JUST ABOUT READY TO GO OUT.

09:14:36 16 BUT DOES THAT TAKE CARE OF THE ISSUE?

09:14:38 17 MR. VAN NEST: IT MIGHT. I'M NOT SURE.

09:14:40 18 MR. KWUN, DOES THAT TAKE CARE OF THE ISSUE?

09:14:43 19 MR. KWUN: I THINK THAT CERTAINLY LIMITS THE ISSUE.
09:14:46 20 WE APPRECIATE THAT.

09:14:47 21 MR. VAN NEST: SO WE WILL LOOK AT YOUR ORDER, AND IF
09:14:50 22 WE THINK THERE'S SOMETHING WE NEED TO RAISE, WE WILL ASK YOU IN
09:14:54 23 THE MORNING WHETHER YOU NEED ANY MORE.

09:14:57 24 BUT THE VERDICT FORM, THE PARTIES ARE WORKING ON IT, AND
09:15:00 25 WE WILL GET YOU SOMETHING CLOSE OF BUSINESS TOMORROW.

09:15:02 1 THE COURT: SO IT MAY BE THAT ONCE NOW THAT I'VE
09:15:04 2 DECIDED AND INFORMED YOU ON THAT IT MAY BE THE STANDARD OF
09:15:08 3 COMPARISON TO THE WORK AS A WHOLE, THAT MAY ALLOW YOU TO
09:15:12 4 PROVIDE ME A DRAFT AS TO 39. AND I THINK 41 WAS YOUR SET OF
09:15:17 5 INSTRUCTIONS AS THE ALTERNATIVE, IT WAS PRETTY COMPLICATED, IT
09:15:20 6 WAS SUCH A KNOT THAT WE HAD TO MOVE ON.

09:15:23 7 MR. KWUN: YES, YOUR HONOR. AND I THINK THAT BOTH
09:15:24 8 SIDES HAVE BEEN TREATING INSTRUCTION 39 AND 41 TOGETHER.

09:15:27 9 THE COURT: YES.

09:15:28 10 MR. KWUN: AND I THINK THAT THE -- PROBABLY THE TWO
09:15:30 11 KEY ISSUES WERE WHAT THE COMPARISON WAS VERSUS THE WHOLE YOU
09:15:37 12 JUST MENTIONED.

09:15:38 13 THE OTHER ONE WAS IT IS STANDARD WHICH I UNDERSTAND FROM
09:15:40 14 YOUR PREVIOUS COMMENTS WOULD BE VIRTUALLY IDENTITY OR YOU ARE
09:15:45 15 STRONGLY LEANING THAT WAY.

09:15:47 16 THE COURT: SO THAT'S WHERE I'M LEANING, BUT BECAUSE
09:15:53 17 THE PARTIES, AND MOSTLY ARISTA, HAD ASKED ME TO CONSIDER
09:15:56 18 EVIDENCE SUBMITTED AT TRIAL ON SOME OF YOUR ADDITIONAL FACTORS,
09:15:59 19 I FEEL THAT I CAN'T REACH A DECISION ON THAT UNTIL I'VE HEARD
09:16:03 20 THE ENTIRE CASE.

09:16:04 21 MR. KWUN: UNDERSTOOD, YOUR HONOR.

09:16:05 22 THE COURT: NOW, IF I'VE ALREADY REACHED THAT
09:16:07 23 DECISION IN YOUR FAVOR BEFORE I'VE HEARD ALL THE EVIDENCE YOU
09:16:11 24 WANTED ME TO CONSIDER, PERHAPS I CAN GO AHEAD AND DO THAT AND I
09:16:15 25 DON'T KNOW THAT THERE'S ANY -- BECAUSE I BELIEVE CISCO SAID

09:16:20 1 THEY THOUGHT EVERYTHING COULD BE SUBMITTED WITHOUT EVIDENCE AT
09:16:24 2 TRIAL.

09:16:24 3 MR. VAN NEST: CERTAINLY IF YOU DECIDED IN OUR FAVOR,
09:16:27 4 YOUR HONOR, I'M NOT GOING TO TAKE UP THE OPPORTUNITY TO PRESENT
09:16:30 5 ANYTHING MORE.

09:16:30 6 THE COURT: THAT'S CERTAINLY THE WAY IT WORKS, ISN'T
09:16:32 7 IT.

09:16:33 8 MR. VAN NEST: THAT'S ALL I HAD THIS MORNING,
09:16:35 9 YOUR HONOR.

09:16:35 10 THE COURT: AND THEN TO THE OBJECTIONS TO THE
09:16:39 11 EXHIBITS, YOU WILL BRING THE EXHIBITS AND MAKE YOUR ARGUMENT,
09:16:41 12 WE WILL DO TOMORROW, IF NEED BE.

09:16:43 13 MR. VAN NEST: WE WILL CONTINUE ON OUR PROTOCOL OF
09:16:45 14 NOTIFYING THE OTHER SIDE BY 5:00 BECAUSE WE NEED TO KNOW WHAT
09:16:49 15 PEOPLE ARE COMPLAINING ABOUT. BUT WE UNDERSTAND YOU HAVE GIVEN
09:16:53 16 US JUDICIAL NOTICE THAT YOU WILL BE IGNORING SOME OF THAT AND
09:16:55 17 WE COULD DO IT LIVE IN THE MORNING.

09:16:56 18 THE COURT: AND YOU KNOW, WE ARE ALL IN HERE IN COURT
09:16:58 19 ALL DAY AND YOU'VE GOT A STAFF THAT ARE WORKING AHEAD AT MY
09:17:02 20 REQUEST, AND I GREATLY APPRECIATE IT. IT'S JUST THAT IT DIDN'T
09:17:05 21 WORK OUT BECAUSE WHEN YOU'RE GETTING TO IT AND MAKING YOUR
09:17:09 22 FINAL DECISIONS IS WHEN I'M NOT WORKING ON IT.

09:17:14 23 SO I THINK THIS WILL BE MUCH MORE EFFICIENT, AND WE WILL
09:17:17 24 HAVE FAR FEWER PROBLEMS.

09:17:19 25 MR. VAN NEST: AGREED.

09:17:19 1 THE COURT: ALL RIGHT. THE LAST THING THAT I WOULD
09:17:21 2 LIKE TO ASK, AND I DON'T KNOW WHETHER ALL THE EXHIBITS ARE IN,
09:17:24 3 I WOULD ACTUALLY LIKE FOR ME, AND MAYBE THE JURY NEEDS IT AS
09:17:27 4 WELL, BUT I DON'T REQUIRE IT, I WOULD LIKE A LIST OF EXHIBITS
09:17:30 5 THAT ARE ASSOCIATED WITH EACH OF THE WORKS. BECAUSE THE JURY
09:17:36 6 IS GOING TO HAVE TO LOOK AT THE WORKS AS A WHOLE, I DON'T EVEN
09:17:39 7 KNOW WHERE THEY ARE IN THE EVIDENCE.

09:17:41 8 IT OCCURS TO ME, AND I ASK YOU THIS, I'M NOT REQUIRING IT,
09:17:44 9 DOES IT MAKE SENSE TO GIVE THE JURY A SHEET THAT DIRECTS THEM
09:17:49 10 TO WHERE THOSE EXHIBITS ARE, BECAUSE THEY ARE REQUIRED TO MAKE
09:17:52 11 THE COMPARISON? PLEASE CONSIDER THAT.

09:17:54 12 IF YOU BOTH AGREE, THAT'S GREAT, IF YOU DISAGREE, AGAIN, I
09:17:58 13 DON'T PICK EXHIBITS OUT TO HIGHLIGHT FOR THE JURY, IT'S NOT MY
09:18:01 14 JOB.

09:18:02 15 MR. NELSON: THAT'S FINE, YOUR HONOR. WE CAN WORK
09:18:04 16 THAT OUT WITH THEM.

09:18:06 17 THE COURT: GOOD. I WOULD LIKE TO KNOW WHERE THEY
09:18:08 18 ARE.

09:18:08 19 MR. NELSON: SURE, UNDERSTOOD.

09:18:09 20 THE COURT: BECAUSE, ULTIMATELY, THAT'S GOING TO BE
09:18:11 21 IMPORTANT FOR ME, AND I DON'T THINK I'VE EVER SEEN THAT EXHIBIT
09:18:14 22 THAT IS THE WORK AS A WHOLE. I MEAN, DON'T EVEN KNOW WHAT THAT
09:18:19 23 IS. BECAUSE SOME OF THESE WERE SO BIG I COULDN'T MANAGE THEM
09:18:23 24 PHYSICALLY.

09:18:24 25 MR. NELSON: RIGHT. UNDERSTOOD, YOUR HONOR. WE WILL

09:18:25 1 SEE IF WE CAN WORK THAT OUT.

09:18:27 2 THE COURT: OKAY. AND I THINK ALL OF JURORS ARE
09:18:31 3 HERE. SO I WILL ASSESS 15 MINUTES EQUALLY BETWEEN THE SIDES
09:18:34 4 FOR THE EXTRA TIME TAKEN THIS MORNING.

09:18:38 5 OKAY. AND I THINK MY VOICE WILL LIKE RESTING A LITTLE AND
09:18:45 6 I WILL BE READY TO LISTEN.

09:19:37 7 (JURY IN AT 9:19 A.M.)

09:19:39 8 THE COURT: ALL RIGHT. PLEASE BE SEATED, EVERYONE.

09:20:13 9 GOOD MORNING, LADIES AND GENTLEMEN, WE ARE BACK ON THE
09:20:15 10 RECORD IN CISCO VERSUS ARISTA. ALL OF OUR JURORS ARE HERE.

09:20:21 11 YOU CAN TELL MY VOICE IS DISAPPEARING, SO YOU WON'T BE
09:20:23 12 HEARING MUCH FROM ME TODAY.

09:20:26 13 DR. CHEVALIER IS HERE. GOOD MORNING. I'M GOING TO HAVE
09:20:28 14 YOU SWORN FOR A NEW COURT DAY AND MR. PAK IS GOING TO CONTINUE
09:20:32 15 WITH DIRECT EXAM.

09:20:33 16 MR. PAK: THAT'S CORRECT, YOUR HONOR.

09:20:35 17 **(PLAINTIFF'S WITNESS, DR. JUDITH CHEVALIER, WAS SWORN.)**

09:20:36 18 THE WITNESS: YES.

09:20:49 19 THE COURT: GO AHEAD.

09:20:51 20 **DIRECT EXAMINATION**

09:20:51 21 BY MR. PAK:

09:20:52 22 Q. WELCOME BACK, DR. CHEVALIER. I THINK WE WERE ALMOST DONE
09:20:56 23 WITH YOUR DIRECT PRESENTATION, SO I WANT TO GO BACK TO SLIDE
09:21:00 24 29.

09:21:02 25 AND I THOUGHT IT WOULD ACTUALLY BE HELPFUL JUST TO START

09:21:05 1 BACK UP HERE AGAIN AND THEN GO TO THE CALCULATIONS AND JUST
09:21:08 2 HAVE YOU EXPLAIN AGAIN WHAT YOU WERE DOING WITH THE MARKET
09:21:11 3 SHARE ANALYSIS, AND SPECIFICALLY HOW THE FIGURE ON THE RIGHT
09:21:17 4 RELATES TO THE FIGURE ON THE LEFT.

09:21:18 5 SO IF YOU COULD JUST WALK THE JURY AGAIN THROUGH YOUR
09:21:22 6 MARKET SHARE ANALYSIS USING THIS GRAPHIC.

09:21:26 7 A. OKAY. SURE.

09:21:27 8 SO AGAIN, WE ARE IN THE PART OF THE DAMAGES WHERE WE ARE
09:21:30 9 CALCULATING ARISTA -- CISCO'S ACTUAL DAMAGES, ALL CALLED THE
09:21:34 10 "LOST PROFITS."

09:21:35 11 AND IN THIS PART WE HAVE ALREADY ESTABLISHED AT THIS PLACE
09:21:40 12 WHERE WE ARE, WE HAVE ALREADY ESTABLISHED THE SHARE OF ARISTA'S
09:21:43 13 SALES THAT WOULD NOT HAVE BEEN MADE, BUT FOR THE INFRINGEMENT,
09:21:48 14 AND THAT IS THE SHARE THAT SOME OF WHICH MIGHT -- WOULD BE
09:21:54 15 EXPECTED TO FLOW TO CISCO.

09:21:57 16 AND WHAT WE HAVE HERE IN THIS PICTURE IS A DEPICTION OF
09:22:01 17 HOW INDEED THAT -- THOSE SALES OF ARISTA ARE DETERMINED BY ME
09:22:07 18 TO ACTUALLY FLOW TO CISCO AND OTHERS.

09:22:10 19 SO IN THE PICTURE ON THE LEFT YOU CAN SEE ARISTA'S
09:22:19 20 PRE-EXISTING SALES. AND THEY KEEP THAT THEN LOOSE THIS SLICE
09:22:22 21 BECAUSE THAT'S THE PART THAT WE DETERMINED THEY WOULD KEEP EVEN
09:22:25 22 IF THEY WEREN'T -- WITH EVEN -- IF THEY WEREN'T ALLOWED TO
09:22:30 23 INFRINGEMENT CISCO'S COPYRIGHTS. AND THEN THE OTHER PART, AND
09:22:34 24 THE PART THAT THEY WOULDN'T BE ABLE TO MAKE BUT THAT SOMEONE
09:22:39 25 ELSE WOULD PRESUMABLY SELL.

09:22:42 1 AND WE DIDN'T ASSUME THAT CISCO WOULD GET ALL OF THOSE, I
09:22:45 2 DIDN'T ASSUME THAT CISCO WOULD GET ALL OF THOSE SALES BECAUSE
09:22:48 3 THERE ARE OTHER COMPETITORS IN THE MARKET PLACE.

09:22:55 4 AND SO THE ARISTA SHARE GOES TO ALL OF THE OTHER
09:22:57 5 COMPETITORS IN THE MARKETPLACE PROPORTIONALLY TO THEIR SHARE IN
09:23:02 6 THE, WHAT WE CALL THE BUT-FOR MARKET.

09:23:05 7 SO THE PICTURE ON THE RIGHT IS THE SHARES OF THE FIRM IN
09:23:10 8 THE MARKET TAKING ARISTA OUT; RIGHT. SO IF ARISTA HAS A CHUNK,
09:23:15 9 WE TAKE THAT CHUNK OUT. AND THEN WHAT'S LEFT IS DIVIDED UP BY
09:23:21 10 THE OTHER FIRMS IN THE SAME RATIO AS THEIR SHARES IN THE
09:23:25 11 MARKET.

09:23:25 12 Q. AND JUST TO BE CLEAR, I DON'T SEE ON THE RIGHT-HAND SIDE
09:23:28 13 THE LITTLE BLUE SLICE THAT WE HAVE LEFT FOR ARISTA. CAN YOU
09:23:31 14 EXPLAIN WHY THAT IS IN THE DEPICTION?

09:23:33 15 A. RIGHT. SO WE DON'T HAVE ARISTA'S -- I DON'T HAVE ARISTA'S
09:23:36 16 SALES GOING SOMEHOW BACK TO ARISTA. WE HAVE ALREADY
09:23:41 17 ESTABLISHED HOW MUCH OF ARISTA'S SALES ARISTA WILL KEEP IF IT'S
09:23:44 18 NOT INFRINGING CISCO'S COPYRIGHTS.

09:23:49 19 AND SO ARISTA'S SHARE IS THEN DIVIDED AMONG ALL OF THE
09:23:55 20 OTHER FIRMS IN THE MARKET, NOT JUST CISCO.

09:23:58 21 Q. THANK YOU.

09:23:59 22 SO WITH THAT, LET'S PICK UP WHERE WE LEFT OFF ON FRIDAY
09:24:03 23 NIGHT WHICH WAS LOOKING AT YOUR SPECIFIC CALCULATIONS. AND
09:24:06 24 HERE JUST TO BE CLEAR, DR. CHEVALIER, YOU HAVE A SET OF
09:24:09 25 CALCULATIONS WITH THE TITLE CREHAN DATA. THEN YOU HAVE AT THE

09:24:18 1 BOTTOM WITH ANOTHER SET OF ALLEGATIONS, DELL'ORO DATA.

09:24:24 2 CAN YOU DESCRIBE FOR THE JURY WHY YOU HAVE TWO SETS OF
09:24:28 3 CALCULATIONS FOR THE JURY?

09:24:29 4 A. WE USE THESE TWO DATA SOURCES, BECAUSE MARKET SHARE DATA,
09:24:34 5 WE DON'T GET FROM EITHER OF THE PARTIES BECAUSE IT INCLUDES
09:24:38 6 SALES. IN ORDER TO GET MARKET SHARES YOU NEED TO KNOW
09:24:41 7 EVERYBODY IN THE MARKET SALES.

09:24:42 8 SO THE COMPANIES IN THIS MARKET USE COMMERCIAL VENDORS TO
09:24:51 9 GET INFORMATION ABOUT THEIR MARKET SHARE. AND CREHAN AND
09:24:57 10 DELL'ORO ARE TWO PROVIDERS THAT ARE BOTH WELL KNOWN AND WELL
09:25:01 11 ESTABLISHED IN THE MARKETPLACE.

09:25:02 12 SO I'VE JUST INCLUDED THEM HERE TO SHOW BOTH OF THE MAJOR
09:25:05 13 COMMERCIAL PROVIDERS' ESTIMATES OF MARKET SHARE. SO YOU CAN
09:25:10 14 SEE THAT, THAT'S HOW THAT DIFFERS.

09:25:14 15 Q. SO JUST TO BE CLEAR FOR THE JURY, SO THESE ARE
09:25:17 16 CONSULTANCIES THAT BASICALLY TELL MARKET VENDORS, HERE'S YOUR
09:25:21 17 MARKET SHARE, HERE'S YOUR OTHER COMPETITOR'S MARKET SHARE AND
09:25:25 18 SO FORTH. AND BECAUSE THEY ARE TWO COMPANIES, THEY MAY HAVE
09:25:28 19 SLIGHTLY DIFFERENT MARKET SHARE NUMBERS FROM TIME TO TIME; IS
09:25:32 20 THAT RIGHT?

09:25:32 21 A. EXACTLY.

09:25:32 22 Q. SO I WOULD LIKE TO DO IS HAVE YOU WALK THROUGH THE FIRST
09:25:35 23 TOP PORTION AND EXPLAIN HOW YOU GOT TO THE \$334 MILLION NUMBER
09:25:41 24 THAT'S IN THE MIDDLE RIGHT-HAND SIDE.

09:25:45 25 A. OKAY. SO STARTING ON THE VERY LEFT, WE HAVE ADJUSTED

09:25:49 1 ARISTA SWITCH REVENUE.

09:25:51 2 SO THERE I'VE TAKEN ARISTA'S TOTAL SWITCH REVENUE AND THEN
09:25:56 3 TAKEN 80 PERCENT OF IT TO GET TO THE ADJUSTMENT, AND THEN THE
09:26:01 4 BUT-FOR MARKET SHARE IS THE PART OF THAT THAT WILL GO TO CISCO
09:26:06 5 THROUGH THE CALCULATION THAT WE JUST DESCRIBED.

09:26:09 6 AND THEN THE BRIGHT BLUE -- SO THAT GIVES US THE BRIGHT
09:26:13 7 BLUE BAND IN THE MIDDLE WHICH IS CISCO'S LOST REVENUES.

09:26:16 8 SO WE'VE GOTTEN TO STARTING FROM ARISTA'S REVENUES TO THE
09:26:21 9 ADJUSTED REVENUES TO THE PART THAT WOULD GO TO CISCO TO THE
09:26:24 10 MIDDLE BAND BEING CISCO'S LOST REVENUES.

09:26:28 11 BUT OF COURSE IF CISCO WERE TO MAKE ADDITIONAL SALES IN
09:26:32 12 THIS BUT-FOR WORLD, THEY WOULD ALSO BEAR ADDITIONAL COSTS. THE
09:26:36 13 WHOLE REVENUE ISN'T PROFIT. SO WE TAKE CISCO'S LOST REVENUE
09:26:41 14 AND WE MULTIPLY BY CISCO'S PROFIT MARGIN, AND THAT GIVES US AT
09:26:46 15 THE END, CISCO'S LOST PROFITS.

09:26:47 16 AND THEN THAT'S CALCULATED YEAR BY YEAR THROUGH THE DAMAGE
09:26:53 17 PERIOD TO TOTAL TO THE \$334,961, IN THE UPPER PANEL THAT YOU
09:26:58 18 SEE.

09:26:59 19 Q. OKAY. SO WE HAVE ADJUSTED ARISTA SWITCH REVENUE. THEN WE
09:27:04 20 ARE MULTIPLYING IT BY THAT MARKET SHARE ANALYSIS THAT YOU DID
09:27:08 21 ON THE RIGHT-HAND SIDE?

09:27:10 22 A. RIGHT.

09:27:10 23 Q. THEN YOU GET THE CISCO'S LOST REVENUES IN BLUE IN THE
09:27:14 24 MIDDLE?

09:27:14 25 A. YES.

09:27:15 1 Q. THEN YOU ARE TAKING CISCO'S PROFIT MARGIN NUMBERS TO GET
09:27:18 2 CISCO'S LOST PROFITS; IS THAT WHAT YOU DID?

09:27:21 3 A. THAT'S EXACTLY RIGHT, THAT'S WHAT I DID.

09:27:23 4 Q. AND THEN YOU ARE DOING IT FOR HOW MANY YEARS HERE ON THE
09:27:26 5 TOP?

09:27:27 6 A. OKAY. SO IT'S FOR SIX YEARS, THOUGH YOU WILL NOTE THAT
09:27:31 7 THE 2016, IT'S A SMALL NUMBER BECAUSE WE ONLY -- I ONLY HAVE
09:27:35 8 DATA THROUGH MARCH OF 2016.

09:27:38 9 Q. OKAY. SO WHEN YOU ADD UP THAT SET OF CALCULATIONS ON THE
09:27:42 10 WAY RIGHT, 2011 TO 2016, CAN YOU STATE ON THE RECORD THE NUMBER
09:27:47 11 THAT YOU ARRIVED AT FOR THE CREHAN MARKET SHARE DATA AS CISCO'S
09:27:53 12 LOST PROFITS?

09:27:55 13 A. OKAY. SO CISCO'S TOTAL LOST PROFITS ARE \$334,961,000.

09:28:03 14 Q. THEN IF WE GO TO THE BOTTOM HALF OF THE CHART, I THINK YOU
09:28:06 15 APPLIED THE SAME ANALYSIS; IS THAT CORRECT?

09:28:07 16 A. CORRECT.

09:28:08 17 Q. AND IF YOU DID THE -- IF YOU USED THE MARKET SHARE NUMBERS
09:28:12 18 FROM DELL'ORO, WHAT WERE THE NUMBERS THAT YOU GOT IN TERMS OF
09:28:16 19 THE CISCO LOST PROFITS FOR THE SAME TIME PERIOD?

09:28:19 20 A. SO THE LOST PROFITS USING THE DELL'ORO DATA TOTAL
09:28:26 21 \$310,694,000.

09:28:27 22 Q. AND AGAIN, WE ARE JUST TALKING ABOUT CISCO'S LOST PROFITS
09:28:30 23 AT THIS POINT; IS THAT RIGHT?

09:28:31 24 A. RIGHT, JUST CISCO'S LOST PROFITS.

09:28:33 25 Q. AND AT A LATER POINT IN THE TRIAL YOU WILL COME TO TALK

09:28:36 1 MORE ABOUT ARISTA'S DISGORGEMENT OR DISGORGEMENT OF ARISTA'S
09:28:41 2 PROFITS?

09:28:41 3 A. CORRECT.

09:28:42 4 Q. OKAY. SO I THINK THAT WRAPS UP THE COPYRIGHT DAMAGES
09:28:47 5 PRESENTATION FOR NOW AND WE ARE GOING TO FOCUS ON THE PATENT
09:28:51 6 INFRINGEMENT ISSUES IN THE CASE.

09:28:57 7 AT A VERY HIGH LEVEL, CAN YOU SUMMARIZE FOR US THE TYPE OF
09:29:01 8 ANALYSIS YOU DID WITH RESPECT TO THE PATENT DAMAGES USING SLIDE
09:29:04 9 33.

09:29:04 10 A. OKAY. SO FIRST, THE PATENT LAW TELLS US THAT THE PATENT
09:29:09 11 HOLDER IS ENTITLED TO, AT LEAST A REASONABLE ROYALTY FROM THE
09:29:17 12 INFRINGER. SO THAT'S THE AMOUNT OF MONEY THAT THE INFRINGER
09:29:21 13 SHOULD HAVE PAID IN ORDER TO USE THE PATENTED TECHNOLOGY.

09:29:26 14 Q. OKAY. AND WHAT WAS THE TIME PERIOD THAT YOU WERE LOOKING
09:29:28 15 AT IN TERMS OF THE PATENT DAMAGES?

09:29:30 16 A. OKAY. SO THE PATENT DAMAGES ARE FROM THE TIME OF ARISTA
09:29:36 17 PROVIDING -- CISCO PROVIDING NOTICE TO ARISTA THROUGH TRIAL.
09:29:43 18 AND SO THAT DATE IS DECEMBER 5TH, 2014, THROUGH TODAY.

09:29:50 19 Q. OKAY. AND THEN THERE'S SOMETHING TITLED "HYPOTHETICAL
09:29:54 20 NEGOTIATION" AT THE TOP, THEN YOU HAVE A PICTURE OF PEOPLE AT A
09:29:56 21 CONFERENCE ROOM TABLE.

09:29:57 22 CAN YOU EXPLAIN WHAT YOU WERE ILLUSTRATING WITH THIS IDEA
09:29:59 23 OF A HYPOTHETICAL NEGOTIATION?

09:30:02 24 A. OKAY. SO THERE'S A CASE IN PATENT LAW CALLED THE GEORGIA
09:30:08 25 PACIFIC CASE. AND THE GEORGIA PACIFIC CASE DESCRIBES VARIOUS

1 THINGS THAT SHOULD BE CONSIDERED IN CONSTRUCTING PATENT
2 DAMAGES.

3 AND ONE OF THE THINGS TO BE CONSIDERED IS WHAT'S CALLED A
4 HYPOTHETICAL NEGOTIATION. AND A HYPOTHETICAL NEGOTIATION TAKES
5 THE IDEA THAT WE CAN THINK ABOUT A NEGOTIATION THAT NEVER
6 ACTUALLY HAPPENED, BUT ASSESS WHAT WOULD HAVE HAPPENED IF THIS
7 NEGOTIATION TOOK PLACE.

8 AND THE IDEA IS WE GO BACK TO THE FOURTH QUARTER OF 2008
9 WHICH IS THE TIME OF FIRST INFRINGEMENT BY ARISTA, AND WE
10 IMAGINE THAT CISCO AND ARISTA ARE UNDERTAKING A NEGOTIATION,
11 THUS THE LITTLE PICTURE OF THE CONFERENCE TABLE.

12 AND IN THAT NEGOTIATION THEY BOTH UNDERSTAND THAT IF
13 ARISTA DOES NOT TAKE A LICENSE FOR THIS TECHNOLOGY, IT WOULD
14 THEN BE INFRINGING.

15 SO WE ARE LOOKING AT A SITUATION IN WHICH CISCO AND ARISTA
16 ARE NEGOTIATING TERMS FOR A LICENSE FOR THE TECHNOLOGY AND WE
17 ARE ASKED BY THE GEORGIA PACIFIC CASE TO CONSIDER WHAT TERMS
18 WOULD EMERGE FROM THAT HYPOTHETICAL NEGOTIATION.

19 Q. AND WHEN WOULD THAT HYPOTHETICAL NEGOTIATION BE CONDUCTED
20 IN TERMS OF TIME?

21 A. AH. SO EVEN THOUGH THE DAMAGES PERIOD STARTS IN 2014, THE
22 HYPOTHETICAL NEGOTIATION IS TO TAKE PLACE AT THE TIME OF FIRST
23 INFRINGEMENT, SO IN THE FOURTH QUARTER OF 2008.

24 Q. OKAY. SO THIS IS -- WE ARE ACTUALLY SAYING TO OURSELVES,
25 IF THE PARTIES HAD GOTTEN TOGETHER SOMEHOW IN LATE 2008, AND

09:31:47 1 INSTEAD OF LITIGATION, HAD DECIDED TO NEGOTIATE A LICENSE, WHAT
09:31:49 2 WOULD THE TERMS BE AS PART OF A REASONABLE NEGOTIATION BETWEEN
09:31:53 3 THE PARTIES AT THAT TIME?

09:31:54 4 A. THAT'S EXACTLY CORRECT. AND ONE QUICK NOTE, SO THIS IS --
09:31:58 5 THE NEGOTIATION IS FOR A NONEXCLUSIVE LICENSE TO USE THE
09:32:02 6 PATENT. THAT MEANS THAT CISCO GRANTS ARISTA THE RIGHT TO USE
09:32:04 7 THE PATENT BUT COULD GRANT IT TO OTHERS AS WELL.

09:32:07 8 Q. OKAY. SO LET'S GO TO -- WAS THERE A PARTICULAR APPROACH
09:32:10 9 OR MODEL THAT YOU USE AS PART OF THAT REASONABLE ROYALTY
09:32:14 10 ANALYSIS?

09:32:14 11 A. YES. SO I FOCUSED ON THE COST APPROACH.

09:32:21 12 WE HEARD FROM DR. JEFFAY THAT THERE WERE SUBSTANTIAL
09:32:24 13 BENEFITS TO THE PATENT. AND THE FACT THAT THERE ARE
09:32:26 14 SUBSTANTIAL BENEFITS TO THE PATENT TELLS US THAT ARISTA HAS A
09:32:29 15 REAL, REAL WILLINGNESS PAY TO USE THE PATENTED TECHNOLOGY.

09:32:36 16 HOWEVER, WE ALSO LEARNED FROM DR. JEFFAY THAT ARISTA HAS
09:32:40 17 ACCESS TO SOME POSSIBLE DESIGN-AROUND OPPORTUNITIES. THOSE ARE
09:32:45 18 WAYS IN WHICH ARISTA CAN DESIGN AROUND THE PATENTED TECHNOLOGY
09:32:55 19 WITHOUT INFRINGING.

09:32:56 20 A COMMONLY USED APPROACH TO CONSIDER PATENT DAMAGES IS TO
09:33:00 21 CONSIDER THE COST APPROACH. AND THE COST APPROACH IS THE IDEA
09:33:04 22 THAT WE CAN EXAMINE THE COSTS REQUIRED TO CONSTRUCT OR DO THAT
09:33:11 23 DESIGN-AROUND, THEN CONSTRUCT THAT ALTERNATIVE TECHNOLOGY.

09:33:15 24 AND THE IMPORTANT THING HERE IS THAT IF ARISTA HAS ACCESS
09:33:23 25 TO A FULLY COMMERCIALY VIABLE ALTERNATIVE TO THE PATENTED

TECHNOLOGY, WHICH IS NOT NECESSARILY THE CASE HERE, BUT WE DO HAVE A DESIGN AROUND, THAT ARISTA WILL ONLY PAY UP TO THE COST OF DESIGNING AROUND THE PATENT IN THAT LICENSE.

SO IN THE LICENSE AGREEMENT, ARISTA IS WILLING TO PAY THE COST THEY AVOID TO DESIGN AROUND THE PATENT.

Q. SO IF WE LOOK AT THAT ANALYSIS ON SLIDE 36, CAN YOU WALK THE JURY THROUGH THE NUMBERS THAT YOU ARRIVED AT WHEN YOU WERE CONSIDERING THE COST THAT IT WOULD TAKE FOR ARISTA TO TAKE OUT THE PATENTED FEATURES FROM ITS OPERATING SYSTEM?

A. OKAY. SO AS DR. JEFFAY TESTIFIED ON FRIDAY, HE WAS ASKED ABOUT WHAT WOULD BE REQUIRED IN TERMS OF HUMANS TO DESIGN AROUND THE PATENTED TECHNOLOGY. AND HE TESTIFIED THAT IT WOULD TAKE 20 ENGINEERS AT LEAST SIX MONTHS TO DESIGN AROUND THE PATENTED TECHNOLOGY.

AND SO I WILL USE THAT INFORMATION FROM DR. JEFFAY AS AN INPUT TO CALCULATING THE COST OF DESIGNING AROUND THE PATENT.

Q. SO THE INPUTS TO YOUR CALCULATION WAS THERE WERE 20 ENGINEERS AT ARISTA THAT COULD HAVE WORKED ABOUT SIX MONTHS, MAYBE SIX MONTHS TO A YEAR, TO TAKE OUT THE FEATURES THAT HAVE BEEN ACCUSED OF INFRINGING THE '526 PATENT?

A. EXACTLY.

Q. SO WHEN YOU DO THAT ANALYSIS, WHAT NUMBER DID YOU COME UP WITH AS THE COST FOR DESIGNING AROUND THE '526 PATENT FOR ARISTA?

A. OKAY. SO I CAME TO A CALCULATION OF 2 TO \$2.2 MILLION AS

09:35:11 1 THE TOTAL COST.

09:35:12 2 WHERE THAT CAME FROM WAS I USED PUBLIC DATA AND SOME
09:35:19 3 SALARY DATA PRODUCED IN THE CASE TO GET THE COST PER ENGINEER
09:35:22 4 PER YEAR AND THAT INCLUDES BOTH THEIR COMPENSATION AND THINGS
09:35:25 5 LIKE BENEFITS.

09:35:26 6 AND THEN I TOOK THAT COST PER ENGINEER PER YEAR AND I
09:35:33 7 MULTIPLIED THAT BY THE NUMBER OF ENGINEERS REQUIRED FOR A HALF
09:35:36 8 A YEAR, AND THAT COMES TO \$2.2 MILLION HERE.

09:35:40 9 Q. NOW JUST TO BE CLEAR DR. CHEVALIER, YOU ARE NOT SAYING
09:35:46 10 THAT ARISTA WOULD HAVE A COMMERCIALLY VIABLE PRODUCT AFTER THE
09:35:49 11 DESIGN-AROUND, THAT'S NOT YOUR OPINION, CORRECT?

09:35:53 12 A. SO DR. JEFFAY HAS SAID THAT THIS WILL NOT BE A
09:35:56 13 COMMERCIALLY ACCEPTABLE PRODUCT. I AM, NONETHELESS, USING THIS
09:36:04 14 DESIGN-AROUND COST IN MY COAST APPROACH. SO IT'S CLEARLY AN
09:36:09 15 UNDERESTIMATE OF ARISTA'S WILLINGNESS TO PAY.

09:36:12 16 Q. SO COULD YOU WALK US THROUGH SOME OF THE GEORGIA PACIFIC
09:36:15 17 FACTORS AT A VERY HIGH LEVEL TO SEE WHETHER ANY OF THEM REALLY
09:36:19 18 HAD AN IMPACT ON YOUR DAMAGES ANALYSIS?

09:36:21 19 A. OKAY. SO COURTS HAVE STIPULATED THAT DAMAGES SHOULD BE
09:36:28 20 CALCULATED CONSIDERING EACH OF THESE GEORGIA PACIFIC FACTORS.
09:36:31 21 AND I DID CONSIDER EACH OF THESE OF GEORGIA PACIFIC FACTORS IN
09:36:35 22 COMING UP WITH MY DAMAGES.

09:36:36 23 A NUMBER OF THEM ARE NOT RELEVANT TO THIS CASE OR NEUTRAL
09:36:40 24 TO THIS CASE -- OR HAVE A NEUTRAL IMPACT ON THE DAMAGES.

09:36:43 25 FOR EXAMPLE, THE FIRST TWO HAVE TO DO WITH PRIOR EXISTING

09:36:50 1 LICENSE AGREEMENTS FOR THE PATENTED TECHNOLOGIES OR PATENTED
09:36:55 2 RELATED TECHNOLOGIES. AND IN THIS CASE THERE ARE NOT ANY
09:36:57 3 EXISTING LICENSING AGREEMENTS.

09:36:59 4 THERE ARE A NUMBER OF FACTORS HERE WHICH WOULD HAVE
09:37:03 5 SUGGESTED PUSHING UP MY DAMAGES CALCULATION.

09:37:05 6 SO FOR EXAMPLE, FACTOR FIVE IS THE COMMERCIAL RELATIONSHIP
09:37:08 7 OF THE LICENSOR OR THE LICENSEE. THAT IS TYPICALLY UNDERSTOOD
09:37:11 8 TO MEAN THAT WHEN A COMPANY IS LICENSING A DIRECT COMPETITOR,
09:37:17 9 IT WILL TYPICALLY EXPECT A LARGER PAYMENT THAN IF IT'S JUST
09:37:21 10 LICENSING AN UNRELATED FIRM.

09:37:23 11 NONETHELESS, DESPITE THOSE UPWARD PRESSURES, I CONCLUDED
09:37:28 12 THAT THE OUTCOME OF THE HYPOTHETICAL NEGOTIATION WOULD LEAD TO
09:37:30 13 TOTAL DAMAGES OF 2 TO \$2.2 MILLION.

09:37:33 14 Q. OKAY. AND THAT'S FOR THE ONE PATENT THAT CISCO IS
09:37:36 15 ASSERTING IN THIS CASE, CORRECT?

09:37:37 16 A. CORRECT.

09:37:38 17 Q. AND SO LOOKING AT THE LAST SLIDE OF YOUR DAMAGES
09:37:45 18 PRESENTATION, CAN YOU SUMMARIZE FOR THE JURY THE ULTIMATE
09:37:48 19 CONCLUSIONS YOU HAVE WITH RESPECT TO BOTH COPYRIGHT
09:37:52 20 INFRINGEMENT AS WELL AS PATENT INFRINGEMENT DAMAGES AT THIS
09:37:54 21 POINT IN THE CASE?

09:37:54 22 A. OKAY. SO THE PATENT INFRINGEMENT DAMAGES, I WILL START
09:37:58 23 DOWN THERE BECAUSE THAT'S STRAIGHTFORWARD.

09:38:00 24 THE TOTAL PATENT INFRINGEMENT DAMAGES ARE 2 TO
09:38:03 25 \$2.2 MILLION. I HAVE ALSO CONCLUDED THAT THE APPROPRIATE LOST

09:38:07 1 PROFITS DAMAGES THROUGH MARCH 2016 ARE \$311 TO \$335 MILLION.

09:38:15 2 AND THEN YOU WILL RECALL THERE IS THE SEPARATE COMPONENT
09:38:19 3 OF DAMAGES WHICH IS THE INFRINGER'S PROFITS DISGORGEMENT. AND
09:38:27 4 HERE, AGAIN, MY BURDEN IS TO ONLY PROVIDE THE REVENUES, AND
09:38:30 5 THOSE REVENUES ARE \$1.3 BILLION.

09:38:36 6 Q. SO THE TWO NUMBERS AT THE TOP, THEY GO TO THE COPYRIGHTED
09:38:42 7 PART OF THE CASE, AND THEY ARE \$311 TO \$335 MILLION FOR LOST
09:38:47 8 PROFITS DAMAGES TO CISCO. AND THEN IN TERMS OF REVENUES
09:38:50 9 SUBJECT TO DISGORGEMENT ANALYSIS, THAT'S \$1.3 BILLION, THAT'S
09:38:55 10 JUST THE COPYRIGHT SIDE OF THE CASE, CORRECT?

09:38:57 11 A. CORRECT.

09:38:57 12 Q. AND THEN FOR THE PATENT SIDE OF THE CASE, THE PATENT
09:39:00 13 DAMAGES THAT YOU CALCULATED WAS \$2 TO \$2.2 MILLION; IS THAT
09:39:05 14 CORRECT?

09:39:05 15 A. CORRECT.

09:39:05 16 Q. OKAY.

09:39:06 17 MR. PAK: AT THIS TIME, YOUR HONOR, I WOULD LIKE TO
09:39:08 18 PASS THE WITNESS.

09:39:09 19 THE COURT: THANK YOU.

09:39:11 20 MR. SILBERT, CROSS-EXAMINATION?

09:39:14 21 **CROSS-EXAMINATION**

09:39:17 22 MR. SILBERT:

09:39:17 23 Q. GOOD MORNING.

09:39:19 24 A. GOOD MORNING.

09:39:22 25 Q. YOU PREPARED EXPERT REPORTS IN THIS CASE; RIGHT?

09:39:25 1

A. RIGHT.

09:39:26 2

Q. AND IN THOSE EXPERT REPORTS YOU SET FORTH YOUR OPINIONS

09:39:31 3

AND THE BASIS FOR YOUR OPINIONS, CORRECT?

09:39:33 4

A. CORRECT.

09:39:33 5

Q. AND YOU WERE CERTAINLY CAREFUL IN PREPARING FOR EXPERT

09:39:37 6

REPORTS; RIGHT?

09:39:38 7

A. YES.

09:39:38 8

Q. AND YOU STILL STAND BY, TODAY, WHAT YOU SAID IN THOSE

09:39:43 9

EXPERT REPORTS, CORRECT?

09:39:44 10

A. YES.

09:39:44 11

Q. OKAY. AND DID YOU RECEIVE A BINDER?

09:39:56 12

A. I SEE EXHIBITS.

09:39:58 13

MR. VAN NEST: GIVE US JUST A MOMENT.

09:40:00 14

MR. SILBERT: I'M SORRY, I JUMPED THE GUN.

09:40:02 15

THE WITNESS: OKAY.

09:40:11 16

MR. SILBERT: MY APOLOGIES.

09:40:12 17

Q. ONE OF THE THINGS THAT YOU DISCUSSED IN YOUR EXPERT

09:40:16 18

REPORTS WAS LOST PROFITS DAMAGES ON CISCO'S COPYRIGHT CLAIM;

09:40:21 19

RIGHT?

09:40:21 20

A. RIGHT.

09:40:22 21

Q. AND THAT'S SOMETHING THAT YOU ALSO TESTIFIED ABOUT HERE

09:40:27 22

TODAY AND ON FRIDAY, CORRECT?

09:40:29 23

A. CORRECT.

09:40:29 24

Q. NOW IN YOUR EXPERT REPORTS, YOU HAD THREE SCENARIOS FOR

09:40:33 25

LOST PROFITS COPYRIGHT DAMAGES; RIGHT?

09:40:33 1

A. YES.

09:40:35 2

Q. AND LET'S LOOK, IF WE CAN, AT EXHIBIT 4 TO YOUR JUNE 24, 2016, EXPERT REPORT. YOU RECOGNIZE THIS, DR. CHEVALIER, AS A DOCUMENT YOU PREPARED?

09:40:50 4

09:40:51 5

A. YES.

09:40:51 6

Q. THIS IS AN EXHIBIT TO YOUR EXPERT REPORT; RIGHT?

09:40:54 7

A. YES.

09:40:54 8

Q. AND WHAT YOU ARE PRESENTING HERE ARE YOUR THREE SCENARIOS FOR COPYRIGHT LOST PROFITS DAMAGES, CORRECT?

09:40:59 9

09:41:01 10

A. CORRECT.

09:41:01 11

Q. AND YOU EXPLAINED WITH MR. PAK THAT REASON WE SEE TWO VERSIONS OF THE NUMBERS, ONE THAT SAYS CREHAN DATA AND ONE THAT SAYS DELL'ORO DATA, IS BECAUSE YOU LOOKED AT MARKET SHARE FROM TWO DIFFERENT SOURCES AND IT DIFFERED A LITTLE BIT AND YOU DID THE CALCULATIONS FOR EACH OF THEM SEPARATELY; RIGHT?

09:41:08 12

09:41:14 13

09:41:20 14

09:41:21 15

09:41:25 16

A. RIGHT.

09:41:25 17

Q. IF WE LOOK AT WHAT YOU CALLED SCENARIO 1 FOR LOST PROFITS DAMAGES IN YOUR EXPERT REPORT, THE RANGE THERE, IF YOU LOOK AT THE TOTAL COLUMN ON THE RIGHT, WHAT YOU CAME UP WITH FOR SCENARIO 1 IS \$45 MILLION, ROUGHLY WITH THE CREHAN DATA, AND WITH THE DELL'ORO DATA IT WAS ABOUT \$42.6 MILLION; RIGHT?

09:41:30 18

09:41:35 19

09:41:39 20

09:41:45 21

09:41:50 22

A. RIGHT.

09:41:50 23

Q. AND THEN FOR YOUR SCENARIO 2, WHAT YOU CALLED SCENARIO 2, YOU CAME UP WITH \$165 MILLION ROUGHLY, WITH THE CREHAN DATA, AND \$153 MILLION, ROUGHLY, WITH THE DELL'ORO DATA, CORRECT?

09:41:55 24

09:42:02 25

09:42:07 1

A. CORRECT.

09:42:07 2

Q. AND THEN YOUR SCENARIO THREE IS THE ONE WHERE YOU RANGED BETWEEN 334 TO 310; RIGHT?

09:42:12 3

09:42:15 4

A. CORRECT.

09:42:16 5

Q. AND SCENARIO 3, THAT'S THE ONLY ONE YOU TALKED ABOUT IN COURT WITH MR. PAK; RIGHT?

09:42:19 6

09:42:21 7

A. YES.

09:42:22 8

Q. NOW I WANT TO TALK ABOUT THE DIFFERENCE BETWEEN THESE DIFFERENT SCENARIOS.

09:42:25 9

09:42:26 10

SO FIRST OF ALL, IF YOU FOUND IN YOUR REVIEW OF THE ENTIRE RECORD IN THIS CASE, ANY EVIDENCE THAT ANY PARTICULAR CUSTOMER HAD A PREFERENCE FOR A CISCO-LIKE CLI, YOU PUT THAT CUSTOMER IN EITHER SCENARIO 1 OR 2; RIGHT.

09:42:33 11

09:42:38 12

09:42:42 13

09:42:44 14

A. SO IN SCENARIO 1 AND SCENARIO 2, YES, I USED THE INCOMPLETE RECORD OF CUSTOMER COMMUNICATIONS THAT I OBTAINED.

09:42:51 15

09:42:55 16

AND THEN USED THAT TO ALLOCATE CUSTOMERS, IF I HAD VERY

09:42:59 17

SPECIFIC DATA ABOUT SPECIFIC CUSTOMERS, I ALLOCATED THOSE TO

09:43:02 18

THOSE SCENARIOS.

09:43:04 19

AND THEN -- YES. SO THEN OF COURSE, IF THEY ARE NOT HERE ELIGIBLE FOR LOST PROFITS DAMAGES, THEY WOULD MOVE OVER TO THE DISGORGEMENT; RIGHT.

09:43:10 20

09:43:15 21

09:43:17 22

SO THE SCENARIO WITH THE MOST LOST PROFITS DAMAGES HAS THE LEAST DISGORGEMENT.

09:43:21 23

09:43:22 24

Q. I DON'T WANT TO GET AHEAD OF YOU HERE --

09:43:25 25

A. OKAY.

09:43:25 1 Q. FOR EXAMPLE, YOU PRESENTED SLIDES TO MR. PAK ON FRIDAY AND
09:43:30 2 YOU PRESENTED A SNIPPET FROM AN E-MAIL HERE OR DOCUMENT THERE
09:43:36 3 THAT SAID THINGS LIKE, KEY SELLING POINTS, FAMILIAR CLI, OR
09:43:40 4 WORDS TO THAT EFFECT.

09:43:42 5 YOU RECALL WALKING THROUGH THAT EVIDENCE WITH MR. PAK;
09:43:44 6 RIGHT?

09:43:44 7 A. I DO.

09:43:45 8 Q. EVERY SINGLE ONE OF THOSE CUSTOMERS THAT YOU PRESENTED
09:43:48 9 SOME INFORMATION LIKE THAT FOR, IS EITHER IN SCENARIO 1 OR
09:43:53 10 SCENARIO 2. BECAUSE THAT'S -- THEY ARE ONE OF THE CUSTOMERS
09:43:56 11 THAT YOU FOUND IN THE RECORD, SOME PARTICULAR EVIDENCE FOR THAT
09:44:00 12 CUSTOMER, THAT YOU THOUGHT SUGGESTED THAT THEY PREFERRED A
09:44:04 13 CISCO-LIKE CLI; RIGHT?

09:44:05 14 A. RIGHT. SO VERY SPECIFIC EVIDENCE TO THOSE CUSTOMERS,
09:44:08 15 EXACTLY.

09:44:09 16 Q. AND THE DIFFERENCE THEN -- WELL, FIRST OF ALL, SCENARIOS 1
09:44:13 17 AND 2 BUILD ON EACH OTHER, CORRECT?

09:44:16 18 A. CORRECT.

09:44:17 19 Q. SO SCENARIOS 1 AND 2 CONTAIN A TOTAL OF 30 CUSTOMERS IN
09:44:21 20 THEM; RIGHT?

09:44:21 21 A. RIGHT.

09:44:22 22 Q. SO THOSE ARE THE CUSTOMERS THAT YOU FOUND IN YOUR REVIEW
09:44:24 23 OF THE RECORD, A TOTAL OF 30 CUSTOMERS, YOU FOUND SOME DOCUMENT
09:44:30 24 SOMEWHERE THAT SUGGESTED THAT THEY PREFERRED A CISCO-LIKE CLI;
09:44:35 25 RIGHT?

09:44:35 1 A. IN MY REVIEW OF THE -- IN MY REVIEW OF THE INCOMPLETE
09:44:42 2 RECORD OF THOSE CUSTOMERS, I FOUND SOME DOCUMENTS THAT
09:44:45 3 SUGGESTED STRONGLY THAT THEY HAD A PREFERENCE FOR THE
09:44:48 4 CISCO-LIKE OR CISCO CLI.

09:44:49 5 Q. AND THERE ARE 15 SUCH CUSTOMERS IN WHAT YOU CALLED
09:44:53 6 SCENARIO 1, THAT'S YOUR ROUGHLY -- LET'S CALL IT \$45 MILLION
09:44:58 7 SCENARIO; RIGHT?

09:44:58 8 A. YES.

09:44:59 9 Q. AND THEN THERE'S 30 CUSTOMERS IN SCENARIO 2, CORRECT?

09:45:03 10 A. YES.

09:45:03 11 Q. AND THE 30 CUSTOMERS IN SCENARIO 2 INCLUDE THE 15 IN
09:45:08 12 SCENARIO 1 AND THEN AN ADDITIONAL 15; RIGHT?

09:45:11 13 A. RIGHT.

09:45:12 14 Q. OKAY. AND THE DIFFERENCE BETWEEN SCENARIOS 1 AND 2 IS
09:45:17 15 THAT YOU BELIEVE THAT THE EVIDENCE IS STRONGER FOR THE 15
09:45:23 16 CUSTOMERS IN SCENARIO 1 TO SHOW THAT THEY REALLY DO PREFER A
09:45:28 17 CISCO-LIKE CLI; RIGHT?

09:45:30 18 A. SO IN SCENARIO 1, I HAVE MORE SPECIFIC EVIDENCE THAN IN
09:45:36 19 SCENARIO 2.

09:45:37 20 Q. IN FACT, WHAT YOU TESTIFIED, WASN'T IT, IS THAT YOU
09:45:40 21 BELIEVE THE "STRONGEST EVIDENTIARY RECORD" IS FOR THE CUSTOMERS
09:45:47 22 THAT YOU PUT IN SCENARIO 1, THOSE 15 CUSTOMERS; RIGHT?

09:45:50 23 A. THE STRONGEST EVIDENTIARY RECORD FOR THE SPECIFIC
09:45:53 24 CUSTOMERS; RIGHT.

09:45:55 25 Q. AND THEN THE CUSTOMERS IN SCENARIO 2, THERE'S SOME

09:45:59 1 EVIDENCE, BUT IT'S LESS STRONG THAN FOR THE CUSTOMERS IN
09:46:04 2 SCENARIO 1; RIGHT?

09:46:05 3 A. SO FOR SCENARIO 2, WE HAVE LESS INFORMATION FOR SCENARIO 2
09:46:11 4 ABOUT THE SPECIFIC CUSTOMER OF THAT TYPE.

09:46:13 5 Q. AND IN FACT, NOT ONLY LESS IN QUANTITY, BUT THE EVIDENCE
09:46:16 6 YOU HAVE FOR THE CUSTOMERS IN SCENARIO 2, IN YOUR VIEW, IS LESS
09:46:20 7 STRONG, SOMEWHAT -- RELATIVE TO SCENARIO 1, IT'S NOT AS
09:46:23 8 PERSUASIVE, YOU BELIEVE IS THE EVIDENCE FOR THE CUSTOMERS IN
09:46:27 9 SCENARIO 1; RIGHT?

09:46:28 10 A. I THINK PERSUASIVE IS NOT THE RIGHT WORD, IN THAT IT'S
09:46:33 11 LESS COMPLETE.

09:46:34 12 FOR EXAMPLE, WE MIGHT SEE RESPONSE TO AN RFP THAT CONTAINS
09:46:39 13 LANGUAGE ABOUT THE CLI. AND IT'S, YOU KNOW, IT'S DIFFICULT TO
09:46:43 14 TELL EXACTLY WHAT CONVERSATIONS PRECEDED THEM.

09:46:46 15 Q. OKAY. WELL, I WANT TO TALK TO YOU MORE ABOUT SOME OF THIS
09:46:50 16 EVIDENCE, BUT LET ME FIRST ASK YOU, YOUR ROLE HERE IS TO BE AN
09:46:55 17 INDEPENDENT EXPERT; RIGHT?

09:46:56 18 A. RIGHT.

09:46:57 19 Q. AND YOU ARE SUPPOSED TO MAKE A NEUTRAL EVALUATION OF ALL
09:47:03 20 THE EVIDENCE THAT YOU RECEIVE AND REVIEW, CORRECT?

09:47:05 21 A. CORRECT.

09:47:06 22 Q. YOU ARE NOT HERE TO JUST BE AN ADVOCATE FOR CISCO,
09:47:12 23 CORRECT?

09:47:12 24 A. CORRECT.

09:47:12 25 Q. AND I TAKE IT YOU AGREE THAT IF THE JURY CONCLUDES THAT

09:47:17 1 YOU DID NOT MAKE A NEUTRAL EVALUATION OF THE EVIDENCE THEN THE
09:47:24 2 JURY SHOULD DISCOUNT ANY WEIGHT THAT THEY GIVE TO YOUR
09:47:27 3 TESTIMONY; RIGHT?

09:47:28 4 A. RIGHT.

09:47:28 5 Q. SO LET'S TALK ABOUT SOME OF THESE CUSTOMERS THAT YOU PUT
09:47:31 6 INTO SCENARIO 1. AND THAT'S THE -- I'M SORRY, THE RANGES ARE
09:47:36 7 TOO HARD FOR ME, SO I'M GOING TO COLLAPSE THEM INTO SOMETHING
09:47:40 8 CLOSE OR TOWARDS THE TOP END, IF YOU PREFER THAT.

09:47:43 9 SCENARIO 1 IS YOUR, ROUGHLY, \$45 MILLION SCENARIO, FAIR
09:47:49 10 ENOUGH?

09:47:49 11 A. SO I JUST WANT TO BE CLEAR THAT IS THE \$45 MILLION IN LOST
09:47:53 12 PROFITS DAMAGES SCENARIO, NOT THE \$45 MILLION IN TOTAL DAMAGES.

09:47:56 13 Q. WE ARE TALKING ABOUT LOST PROFITS.

09:47:58 14 A. OKAY.

09:47:58 15 Q. YOUR LOST PROFITS SCENARIO 1, YOUR ROUGHLY \$45 MILLION
09:48:05 16 SCENARIO. NOW ROUGHLY TWO-THIRDS OF ALL OF THAT COMES FROM ONE
09:48:08 17 SINGLE CUSTOMER; RIGHT?

09:48:10 18 A. I THINK THAT'S RIGHT.

09:48:12 19 Q. AND THAT CUSTOMER IS FACEBOOK; RIGHT?

09:48:14 20 A. CORRECT.

09:48:14 21 Q. SO FACEBOOK ALONE, UNDER YOUR DAMAGES ANALYSIS, THE WAY
09:48:20 22 YOU SHOWED APPLYING CISCO'S MARKET SHARE -- EXCUSE ME, CISCO'S
09:48:26 23 PROFIT MARGIN TO WHAT CISCO'S REVENUES WOULD HAVE BEEN IF THEY
09:48:30 24 MADE THE SALE INSTEAD OF ARISTA, UNDER THAT LOST PROFITS
09:48:33 25 ANALYSIS YOU DID, FACEBOOK, ALONE, ADDS UP TO \$30 MILLION

09:48:37 1

ROUGHLY FOR CISCO; RIGHT?

09:48:39 2

A. WELL, LET'S BE CAREFUL, BECAUSE IN THE SCENARIO 3, I

09:48:46 3

PRESENTED FACEBOOK WOULD ACTUALLY ONLY ACCOUNT FOR --

09:48:50 4

FACEBOOK'S SPECIFIC REVENUES WOULD ACCOUNT FOR LESS IN SCENARIO

09:48:53 5

3 THAN IT DOES IN SCENARIO 1.

09:48:55 6

Q. OKAY. IN SCENARIO 1, FACEBOOK ACCOUNTS FOR ROUGHLY

09:49:00 7

\$30 MILLION OF THE \$45 MILLION; RIGHT?

09:49:03 8

A. THAT SOUNDS ABOUT RIGHT.

09:49:04 9

Q. OKAY. AND YOUR ASSERTION THERE IS THAT IF ARISTA DID NOT

09:49:11 10

HAVE AN INFRINGING CLI, FACEBOOK WOULD NOT HAVE BOUGHT ARISTA

09:49:15 11

SWITCHES, AND INSTEAD IT WOULD HAVE BOUGHT FROM CISCO, CORRECT?

09:49:21 12

A. CORRECT.

09:49:22 13

Q. YOUR ASSERTION OF FACEBOOK IS THEY ARE NOT GOING TO BUY A

09:49:25 14

SWITCH IF IT DOESN'T HAVE A CLI THAT IT INFRINGING CISCO'S

09:49:31 15

COPYRIGHT; RIGHT?

09:49:32 16

A. RIGHT.

09:49:32 17

Q. AND NOW I WANT TO LOOK AT THE EVIDENCE YOU CITED. IN YOUR

09:49:42 18

EXPERT REPORT TO SUPPORT THAT ASSERTION, YOU CITED ONE E-MAIL;

09:49:46 19

RIGHT?

09:49:46 20

A. I THINK THERE'S -- I CAN'T REMEMBER IF IT'S CITED IN MY

09:49:53 21

EXPERT REPORT, I THINK IT IS. ONE E-MAIL, PLUS DEPOSITION

09:49:59 22

TESTIMONY.

09:49:59 23

Q. LET'S LOOK AT THE E-MAIL YOU CITED WHICH IS EXHIBIT 229

09:50:03 24

WHICH IS IN EVIDENCE. AND THIS IS AN E-MAIL FROM MARK FOSS AT

09:50:14 25

ARISTA TO TWO PEOPLE AT FACEBOOK AT THE TIME; RIGHT?

09:50:16 1

A. YES.

09:50:16 2

Q. YOU SHOWED AN EXCERPT OF THIS E-MAIL ON A SLIDE DURING

09:50:19 3

YOUR DIRECT TESTIMONY WITH MR. PAK, CORRECT?

09:50:22 4

A. YES.

09:50:22 5

Q. AND MR. FOSS TALKS ABOUT THE CLI THERE, HE SAYS IN THE

09:50:28 6

SECOND PARAGRAPH, "AS I MENTIONED TO DAN LAST NIGHT, THE CLI

09:50:32 7

COMMANDS ON OUR SWITCH ARE IDENTICAL TO CISCO IOS, SO THERE

09:50:36 8

SHOULD BE NO LEARNING CURVE TO GET IT CONFIGURED;" RIGHT?

09:50:40 9

A. CORRECT.

09:50:40 10

Q. AND YOUR CONCLUSION, BASED ON THAT, IS THAT FACEBOOK WOULD

09:50:43 11

NOT HAVE BOUGHT ANY SWITCHES FROM ARISTA IF THEY DID NOT

09:50:49 12

INFRINGE CISCO'S COPYRIGHTS; RIGHT?

09:50:51 13

A. SO MY ASSERTION BASED ON THAT, PLUS THE DEPOSITION

09:50:56 14

TESTIMONY OF MR. SADANA, WHO TESTIFIED THAT ARISTA WOULD HAVE

09:51:03 15

HAD VERY FEW CUSTOMERS BUT FOR THE CLI, INCLUDING, HE

09:51:10 16

EXPRESSED, INTIMACY WITH ALL OF ARISTA'S LARGE ACCOUNTS FROM

09:51:14 17

THE BEGINNING, THOSE TWO -- THOSE -- THE BACKDROP OF THE

09:51:21 18

DEPONENT TESTIMONY PLUS THIS, LEAD ME TO CONCLUDE THAT FACEBOOK

09:51:24 19

WOULD NOT HAVE PURCHASED BUT FOR THE INFRINGING CLI.

09:51:29 20

Q. WE ARE GOING TO TALK ABOUT MR. SADANA'S TESTIMONY, I

09:51:32 21

PROMISE YOU.

09:51:33 22

NOW, YOU KNOW -- YOU SAT THROUGH MR. SADANA'S EARLIER

09:51:38 23

TESTIMONY IN THIS CASE; RIGHT?

09:51:39 24

A. I DID.

09:51:39 25

Q. AND YOU KNOW HE'S GOING TO TESTIFY AGAIN IN ARISTA'S CASE;

09:51:42 1

RIGHT?

09:51:42 2

A. YES.

09:51:43 3

Q. AND YOU KNOW THAT MR. SADANA SAID THAT WHEN THIS E-MAIL

09:51:46 4

WAS SENT, NO BUSINESS WAS ACTUALLY DONE WITH FACEBOOK UNTIL

09:51:51 5

SOME TWO YEARS LATER; RIGHT?

09:51:52 6

A. YES; THOUGH IN HIS DEPOSITION, HE DID TESTIFY THAT THEY

09:51:56 7

WERE IN CONTINUOUS CONVERSATIONS WITH FACEBOOK OVER THE 2008 TO

09:52:01 8

2011.

09:52:01 9

Q. ALL RIGHT. YOU ALSO KNOW THAT HE TESTIFIED THAT THE TWO

09:52:06 10

INDIVIDUALS WHO ARE NAMED AS RECIPIENTS ON THIS E-MAIL WEREN'T

09:52:10 11

EVEN AT FACEBOOK BY THE TIME THEY MADE A SALE TO FACEBOOK;

09:52:18 12

RIGHT?

09:52:18 13

A. YES.

09:52:18 14

Q. AND YOU ARE ALSO AWARE THAT FACEBOOK DEVELOPED ITS OWN

09:52:21 15

OPERATING SYSTEM ON SWITCHES IT RUNS IN ITS NETWORK?

09:52:25 16

A. I UNDERSTAND THAT.

09:52:26 17

Q. YOU'VE HEARD OF THE FBOSS OPERATING SYSTEM; RIGHT?

09:52:29 18

A. YES.

09:52:29 19

Q. YOU HAVE NO REASON TO BELIEVE THAT FACEBOOK IS INFRINGING

09:52:34 20

CISCO'S COPYRIGHTS BY COPYING CISCO'S CLI ON TO FACEBOOK'S OWN

09:52:40 21

SWITCH OPERATING SYSTEM, DO YOU?

09:52:41 22

A. NO.

09:52:47 23

Q. AND YOU ALSO KNOW THAT FACEBOOK USES JUNIPER JUNOS IN ITS

09:52:52 24

NETWORK; RIGHT?

09:52:54 25

A. YES, I DO.

09:52:55 1 Q. OKAY. AND SO YOU ARE CERTAINLY AWARE OF EVIDENCE THAT
09:52:59 2 FACEBOOK IS WILLING TO USE SWITCHES THAT DO NOT HAVE A CLI THAT
09:53:03 3 RESEMBLES CISCO'S CLI; RIGHT?
09:53:06 4 A. I KNOW THAT FOR SOME PURPOSES, FACEBOOK IS WILLING TO USE
09:53:15 5 SWITCHES THAT DO NOT USE CISCO'S CLI.
09:53:16 6 Q. YOU ALSO REVIEWED AN RFP, THAT WAS A REQUEST FOR PROPOSAL
09:53:20 7 THAT WAS ISSUED BY FACEBOOK; RIGHT?
09:53:21 8 A. RIGHT.
09:53:22 9 Q. WOULD YOU PLEASE LOOK AT EXHIBIT 6534.
09:53:37 10 A. I DON'T GO THAT HIGH. I HAVE 629 THROUGH 4745 AND 31
09:53:47 11 THROUGH 626 -- OH, IT'S THIS ONE, I'M SORRY.
09:53:50 12 Q. I'M SORRY. I'M JUST AS CONFUSED AS YOU ARE.
09:53:54 13 A. NO, I SHOULD HAVE REALIZED THAT. TELL ME THE NUMBER
09:53:59 14 AGAIN, PLEASE.
09:54:00 15 Q. 6534.
09:54:09 16 A. YES.
09:54:09 17 Q. THIS IS A DOCUMENT THAT YOU CONSIDERED IN FORMING YOUR
09:54:12 18 OPINIONS IN THIS CASE; RIGHT?
09:54:13 19 A. RIGHT.
09:54:13 20 Q. AND YOU RECOGNIZE THIS TO BE THE RFP ISSUED BY FACEBOOK TO
09:54:21 21 ARISTA AND MAYBE OTHERS, ALONG WITH AN E-MAIL AT THE TOP?
09:54:25 22 A. YES.
09:54:27 23 MR. SILBERT: YOUR HONOR, I OFFER 6534.
09:54:30 24 MR. PAK: NO OBJECTION, YOUR HONOR.
09:54:31 25 THE COURT: IT WILL BE ADMITTED.

09:54:31 1 (DEFENDANT'S EXHIBIT 6534 WAS ADMITTED INTO EVIDENCE.)

09:54:33 2 MR. SILBERT:

09:54:33 3 Q. IF YOU LOOK AT THE COVER E-MAIL UP AT THE TOP THERE, YOU
09:54:38 4 SEE THIS IS AN E-MAIL BETWEEN -- FROM SOMEONE NAMED
09:54:44 5 SUSIE CAULFIELD AT ARISTA TO ANSHUL SADANA AND OTHERS.

09:54:47 6 DO YOU SEE THAT?

09:54:50 7 A. YES.

09:54:50 8 Q. YOU SEE THE DATE IS MAY OF 2011; RIGHT?

09:54:56 9 A. YES.

09:54:56 10 Q. AND THE FIRST SENTENCE THERE, MS. CAULFIELD WRITES, SHE
09:55:00 11 WRITES, "HI ALL, FACEBOOK HAS SHARED THEIR REQUIREMENTS DOC AND
09:55:04 12 WOULD LIKE IT BACK BY COB ON WEDNESDAY;" RIGHT?

09:55:06 13 A. RIGHT.

09:55:07 14 Q. THEN IF YOU TURN A FEW PAGES INTO THE EXHIBIT, YOU SEE
09:55:14 15 WHAT'S A SPREADSHEET LISTING REQUIREMENTS?

09:55:17 16 A. YES.

09:55:18 17 Q. TO LOOK AT A FEW OF THESE, IF YOU LOOK AT THE TOP THERE ON
09:55:21 18 ENVIRONMENTALS, THEY LIST, THEY WANT BACK TO FRONT AIRFLOW,
09:55:25 19 THEY WANT FRONT TO BACK AIRFLOW, THEY WANT HOT SWAPPABLE FANS,
09:55:30 20 ET CETERA, THERE'S A BUNCH OF REQUIREMENTS THEY LIST UNDER THE
09:55:33 21 ENVIRONMENTALS; RIGHT?

09:55:34 22 A. CORRECT.

09:55:35 23 Q. AND IF YOU THEN LOOK DOWN TO "SWITCHING PERFORMANCE," YOU
09:55:38 24 SEE MORE REQUIREMENTS THERE, THEY HAVE REQUIREMENTS FOR
09:55:42 25 THROUGHPUT AND CAPACITY, MAXIMUM ARP ENTRIES AND SO FORTH;

09:55:48 1 RIGHT?

09:55:48 2 A. RIGHT.

09:55:49 3 Q. IF YOU GO DOWN TO THEIR LAYER 2 PROTOCOL SUPPORT, THEY

09:55:53 4 LIST THE LAYER 2 PROTOCOLS THEY WANT THE SWITCH TO SUPPORT?

09:55:57 5 A. RIGHT.

09:55:58 6 Q. BELOW THAT THEY LIST LAYER 3 PROTOCOLS THEY WANT THE

09:56:01 7 SWITCH TO SUPPORT; RIGHT?

09:56:02 8 A. RIGHT.

09:56:02 9 Q. AND WE WON'T GO THROUGH ALL OF THIS, BUT IF YOU GO ALL THE

09:56:06 10 WAY DOWN TO THE END OF THE DOCUMENT TO THE MANAGEMENT, IT'S A

09:56:09 11 LITTLE BIT -- SORRY, IT'S NOT -- IT'S SOMEWHERE IN THE MIDDLE

09:56:18 12 WHERE IT SAYS "MANAGEMENT," HERE THEY LIST A BUNCH OF FEATURES

09:56:22 13 THAT THEY WANT FOR MANAGEMENT OF THE SWITCH; RIGHT?

09:56:24 14 A. YES.

09:56:24 15 Q. THEY LIST TACACS PLUS; RIGHT?

09:56:26 16 A. RIGHT.

09:56:26 17 Q. THEY LIST SYSLOG; RIGHT?

09:56:29 18 A. YES.

09:56:31 19 Q. NETCONF; RIGHT?

09:56:33 20 A. YES.

09:56:34 21 Q. THEY LIST A NUMBER OF FEATURES UNDER MANAGEMENT; RIGHT?

09:56:36 22 A. RIGHT.

09:56:36 23 Q. NOWHERE IN THIS DOCUMENT OF WHERE FACEBOOK LISTS ITS

09:56:39 24 REQUIREMENTS DOES IT SAY ANYTHING ABOUT ANY KIND OF CLI THAT IT

09:56:42 25 WANTS; RIGHT?

09:56:43 1

A. CORRECT.

09:56:43 2

Q. OKAY. THANK YOU. YOU CAN PUT THAT ASIDE.

09:56:50 3

YOU ALSO, IN YOUR REVIEW OF EVIDENCE IN THIS CASE, YOU

09:56:53 4

LOOKED AT INTERNAL CISCO DOCUMENTS; RIGHT.

09:56:55 5

A. I DID.

09:56:56 6

Q. AND WOULD YOU PLEASE LOOK AT EXHIBIT 5382. DO YOU HAVE

09:57:16 7

THAT IN FRONT OF YOU?

09:57:18 8

A. I DO.

09:57:19 9

Q. THIS IS AN E-MAIL CHAIN BETWEEN INDIVIDUALS AT CISCO;

09:57:21 10

RIGHT, DREW PLETCHER AND OTHERS?

09:57:23 11

A. YES.

09:57:24 12

Q. AND THIS IS -- YOU SEE THAT THE -- YOU KNOW THE SUBJECT OF

09:57:31 13

THIS INVOLVES FACEBOOK; RIGHT?

09:57:32 14

A. YES.

09:57:33 15

Q. AND THIS IS ONE OF THE DOCUMENTS THAT YOU CONSIDERED IN

09:57:35 16

FORMING YOUR OPINIONS IN THIS CASE; RIGHT?

09:57:37 17

A. YES.

09:57:38 18

MR. SILBERT: YOUR HONOR, I OFFER 5382.

09:57:40 19

MR. PAK: NO OBJECTION, YOUR HONOR.

09:57:41 20

THE COURT: IT WILL BE ADMITTED.

09:57:41 21

(DEFENDANT'S EXHIBIT 5382 WAS ADMITTED INTO EVIDENCE.)

09:57:43 22

MR. SILBERT:

09:57:43 23

Q. IF YOU WOULD LOOK DOWN, PLEASE, AT THE LOWER PARAGRAPH ON

09:57:46 24

THAT -- THAT KIND OF LARGE PARAGRAPH. I WANT TO DIRECT YOUR

09:57:50 25

ATTENTION TO THE SENTENCE THAT BEGINS, FOUR LINES FROM THE

09:57:53 1 BOTTOM THAT STARTS, "THIS IS A MESSAGE."

09:57:56 2 IT SAYS, "THIS IS A MESSAGE THAT FACEBOOK IS DRIVING WITH
09:58:00 3 NUMEROUS NETWORKING COMPANIES THAT THEY ARE TALKING WITH. THIS
09:58:03 4 LIST OF VENDORS INCLUDES ARISTA, 3COM, CUMULOUS, FORCE10,
09:58:09 5 BROCADE, JUNIPER, ET CETERA."

09:58:12 6 DO YOU SEE THAT?

09:58:13 7 A. YES.

09:58:14 8 Q. NOW FIRST OF ALL, I TAKE IT YOUR BELIEF IS THAT EVERY
09:58:17 9 SINGLE ONE OF THOSE COMPANIES INFRINGES CISCO'S COPYRIGHT;
09:58:21 10 RIGHT?

09:58:21 11 A. I THINK I HAVE NO OPINION ON THAT TOPIC, OF COURSE, THAT
09:58:30 12 WOULD REQUIRE AN EXPERT OPINION. BUT, YOU KNOW, I UNDERSTAND
09:58:32 13 THERE ARE OTHER SWITCH VENDORS IN THE MARKETPLACE WITH -- THAT
09:58:36 14 MAY OR MAY NOT INFRINGE CISCO'S CLI.

09:58:38 15 Q. YOU SAY THEY MAY OR MAY NOT INFRINGE, WHATEVER THEY DO,
09:58:45 16 CERTAINLY BASED ON THIS CISCO INTERNAL E-MAIL, FACEBOOK IS
09:58:49 17 WILLING TO TALK TO THEM ABOUT THEIR NETWORK SWITCHES; RIGHT?

09:58:52 18 A. YES.

09:58:53 19 Q. NOW THE E-MAIL GOES ON, "FACEBOOK'S POSITION IS THAT CISCO
09:59:02 20 IS BEHIND THE CURVE AND IS ON TARGET TO BECOME IRRELEVANT; NOT
09:59:08 21 ONLY IN THE FACEBOOK DATA CENTER, BUT IN THE MAJORITY OF, IF
09:59:12 22 NOT ALL BUT COMMERCIAL DATA CENTERS, AS ALL THE OTHER VENDORS
09:59:16 23 ARE AT VARIOUS STAGES UP TO BEING WELL AHEAD OF CISCO."

09:59:25 24 DO YOU SEE THAT LANGUAGE?

09:59:26 25 A. YES.

09:59:27 1 Q. AND THAT IS LANGUAGE YOU REVIEWED IN FORMING YOUR OPINION
09:59:29 2 IN THIS CASE, RIGHT?

09:59:30 3 A. YES. AND INDEED, I DID HAVE DISCUSSIONS WITH SOME CISCO
09:59:33 4 EXECUTIVES, NOT ABOUT IN MAIL SPECIFICALLY, BUT ABOUT BOTH THE
09:59:35 5 NATURE OF THE RFP PROCESS AND WHEN REQUIREMENTS ARE IN IT, AND
09:59:38 6 ALSO THE NATURE OF E-MAILS -- NOT E-MAILS, BUT THE QUESTIONS
09:59:46 7 ABOUT CISCO BEING AHEAD OR BEHIND.

09:59:48 8 Q. I SEE. SO WHEN YOU FOUND A STATEMENT IN AN E-MAIL THAT
09:59:52 9 SEEMED TO UNDERMINE, MAYBE CISCO'S POSITION THAT IT WOULD HAVE
09:59:57 10 SOLD SWITCHES TO FACEBOOK IF ARISTA DIDN'T, YOU WENT AND YOU
10:00:01 11 GOT OTHER INFORMATION AND YOU DECIDED YOU WEREN'T GOING TO GIVE
10:00:04 12 THAT THAT MUCH CREDENCE?

10:00:06 13 A. I THINK THAT'S A MISCHARACTERIZATION. I HAD LONG
10:00:11 14 CONVERSATIONS WITH CISCO EXECUTIVES ABOUT THE RFP PROCESS,
10:00:13 15 ABOUT THEIR INTERNAL ASSESSMENT OF THEIR OWN CAPABILITIES.

10:00:19 16 AND AS I TESTIFIED BEFORE, A CUSTOMER WOULD NOT BUY A
10:00:29 17 SWITCH FROM ARISTA RATHER THAN CISCO BECAUSE OF THE CLI, THE
10:00:34 18 QUESTION IS THE "BUT-FOR."

10:00:36 19 Q. RIGHT.

10:00:36 20 AND IN ONE OF THE QUESTIONS IN THE "BUT-FOR" WORLD IS
10:00:41 21 WHETHER IF THEY DIDN'T BUY FROM ARISTA BECAUSE THEY SIMPLY HAD
10:00:44 22 TO HAVE THE INFRINGING CLI, OTHERWISE THEY WEREN'T GOING TO BUY
10:00:47 23 THE SWITCH. IF THEY DIDN'T BUY FROM ARISTA, WOULD THEY HAVE
10:00:50 24 BOUGHT FROM CISCO OR SOME OTHER VENDOR; RIGHT?

10:00:52 25 A. EXACTLY. AND THAT'S WHY WE HAVE THAT MARKET SHARE

10:00:56 1 ADJUSTMENT THAT ALLOWS THE REVENUES TO FLOW TO ALL THE OTHER
10:01:03 2 COMPETITORS, NOT JUST TO CISCO.

10:01:05 3 Q. RIGHT.

10:01:06 4 AND YOU READ THIS LANGUAGE THAT SAID, "FACEBOOK'S POSITION
10:01:09 5 IS THAT CISCO IS BEHIND THE CURVE AND IS ON TARGET TO BECOME
10:01:14 6 IRRELEVANT, NOT ONLY IN THE FACEBOOK DATA CENTER, BUT IN THE
10:01:17 7 MAJORITY OF, IF NOT ALL BUT COMMERCIAL DATA CENTERS, AS ALL THE
10:01:20 8 OTHER VENDORS ARE AT VARIOUS STAGES UP TO BEING WELL AHEAD OF
10:01:24 9 CISCO;" RIGHT?

10:01:25 10 A. I'M SORRY, I DIDN'T HEAR WHAT THE QUESTION WAS.

10:01:28 11 Q. YOU READ THAT LANGUAGE IN FORMING YOUR OPINIONS?

10:01:31 12 A. YES, I READ THAT LANGUAGE.

10:01:33 13 Q. AND AGAIN, JUST TO BE CLEAR, IF THE JURY TOOK WHAT YOU
10:01:36 14 CALLED SCENARIO 1 AND THEY REMOVED JUST FACEBOOK, ONLY FACEBOOK
10:01:40 15 FROM SCENARIO 1, THAT WOULD TAKE THE NUMBER DOWN TO ROUGHLY
10:01:44 16 \$15 MILLION; RIGHT?

10:01:45 17 A. YES. THAT WOULD MAKE THAT -- WELL, LET'S BE CLEAR ON WHAT
10:01:53 18 THE NUMBER IS. WHEN YOU SAY THE NUMBER, I ASSUME YOU MEAN LOST
10:01:57 19 PROFITS DAMAGES BECAUSE THE EFFECT ON TOTAL DAMAGES WOULD, OF
10:01:59 20 COURSE, BE MUCH SMALLER.

10:02:00 21 Q. OKAY. LET'S MOVE TO SCENARIO 2. AND IN SCENARIO 2 YOU
10:02:08 22 INCLUDE 15 MORE COMPANIES; RIGHT, THAN YOU HAD IN SCENARIO 1?

10:02:11 23 A. YES.

10:02:11 24 Q. AND ONE OF THOSE COMPANIES IS MICROSOFT, CORRECT?

10:02:15 25 A. RIGHT.

10:02:15 1 Q. AND MICROSOFT, YOU KNOW IS A VERY SIGNIFICANT CUSTOMER TO
10:02:18 2 ARISTA; RIGHT?

10:02:19 3 A. CORRECT.

10:02:19 4 Q. AND IN FACT, JUST MICROSOFT AND FACEBOOK COMBINED MAKE UP
10:02:28 5 ROUGHLY 75 PERCENT OF THE -- OF YOUR NUMBER IN SCENARIO 2;
10:02:35 6 RIGHT?

10:02:35 7 A. YES.

10:02:35 8 Q. OKAY. NOW YOU DISCUSSED A FEW DOCUMENTS FROM MICROSOFT TO
10:02:42 9 SUPPORT YOUR OPINION THAT MICROSOFT WOULD NOT HAVE PURCHASED
10:02:45 10 ARISTA SWITCHES IF ARISTA DID NOT INFRINGE CISCO'S CLI; RIGHT?

10:02:48 11 A. RIGHT.

10:02:49 12 Q. OKAY. AND LET'S LOOK AT EXHIBIT 650. THIS IS ONE OF THE
10:03:02 13 E-MAILS THAT YOU DISCUSSED TO SUPPORT YOUR OPINION REGARDING
10:03:07 14 MICROSOFT; RIGHT?

10:03:08 15 A. RIGHT.

10:03:09 16 MR. SILBERT: YOUR HONOR, I OFFER EXHIBIT 650.

10:03:12 17 MR. PAK: NO OBJECTION, YOUR HONOR.

10:03:13 18 THE COURT: IT WILL BE ADMITTED.

10:03:15 19 (DEFENDANT'S EXHIBIT 650 WAS ADMITTED INTO EVIDENCE.)

10:03:15 20 BY MR. SILBERT:

10:03:16 21 Q. AND THIS IS AN E-MAIL BETWEEN ARISTA EMPLOYEES; RIGHT?

10:03:21 22 A. YES.

10:03:21 23 Q. YOU AGREE THAT THIS E-MAIL IS FAIRLY TECHNICAL AND
10:03:28 24 SOMEWHAT DIFFICULT FOR A NONTECHNICAL PERSON, AND SPECIFICALLY
10:03:31 25 FOR YOU TO UNDERSTAND WHAT THEY ARE TALKING ABOUT; RIGHT?

10:03:33 1

A. RIGHT.

10:03:34 2

Q. NOW, AND YOU DID NOT ASK CISCO'S TECHNICAL EXPERT, TO

10:03:40 3

CONFIRM THAT THIS DOCUMENT ACTUALLY INDICATES THAT MICROSOFT

10:03:44 4

HAS A PREFERENCE FOR A CISCO-LIKE CLI; RIGHT?

10:03:47 5

A. I HAD NUMEROUS CONVERSATIONS WITH CISCO TECHNICAL

10:03:52 6

EXPERT -- WITH THE CISCO TECHNICAL EXPERT, I DON'T THINK

10:03:56 7

SPECIFICALLY ABOUT THIS E-MAIL, BUT ABOUT CERTAIN LANGUAGE AND

10:04:00 8

TERMS TO DEFINE THEM SO I COULD UNDERSTAND THIS.

10:04:02 9

Q. YOU NOW KNOW, DON'T YOU, THIS E-MAIL DOES NOT CONCERN THE

10:04:06 10

CLI?

10:04:07 11

A. MY UNDERSTANDING IS THAT THIS E-MAIL CONCERNS MORE THAN

10:04:15 12

THE CLI.

10:04:15 13

Q. YOU NOW UNDERSTAND THAT THIS E-MAIL DOES NOT INDICATE A

10:04:18 14

PREFERENCE BY MICROSOFT FOR A CISCO-LIKE CLI?

10:04:22 15

A. I HONESTLY DO NOT RECALL THAT SPECIFIC TESTIMONY.

10:04:34 16

Q. OKAY. YOU ALSO LOOKED AT AN RFP FROM MICROSOFT; RIGHT?

10:04:44 17

A. I DID.

10:04:44 18

Q. AND THAT ONE ACTUALLY HAD A LINE ITEM FOR FAMILIAR

10:04:47 19

COMMAND-LINE INTERFACE IN THE RFP, CORRECT?

10:04:49 20

A. YES, IT HAD A COUPLE OF LINES RELATED TO CLI ONE THAT

10:04:55 21

MENTIONED THE FAMILIAR CLI.

10:04:56 22

Q. RIGHT.

10:04:57 23

AND WOULD YOU LOOK, PLEASE, AT EXHIBIT 6509.

10:05:22 24

DO YOU RECOGNIZE THAT AS THE COVER E-MAIL AND ATTACHMENT

10:05:24 25

WITH THE MICROSOFT RFP?

10:05:25 1 I'M GOING TO TRY TO SOLVE THE SMALL PRINT PROBLEM IN A
10:05:28 2 SECOND, BUT MY QUESTION NOW IS, YOU RECOGNIZE --

10:05:31 3 A. I RECOGNIZE THIS DOCUMENT.

10:05:34 4 MR. SILBERT: SO WHAT I WOULD LIKE TO DO, YOUR HONOR,
10:05:35 5 IS OFFER 6509, AND AT THE SAME TIME OFFER 6511, WHICH IS THE
10:05:42 6 NATIVE COPY OF THE SPREADSHEET ATTACHED TO 6509, WHICH IS GOING
10:05:48 7 TO BE A LOT EASIER FOR US TO READ.

10:05:50 8 MR. PAK: NO OBJECTION, YOUR HONOR.

10:05:51 9 THE COURT: ALL RIGHT. THEY WILL BOTH BE ADMITTED.

10:05:51 10 (DEFENDANT'S EXHIBIT 6509 AND 6511 WERE ADMITTED INTO
10:05:53 11 EVIDENCE.)

10:05:53 12 BY MR. SILBERT:

10:05:54 13 Q. SO IF YOU LOOK FIRST AT 6509 AT THE COVER E-MAIL, YOU WILL
10:05:58 14 SEE THIS IS AN E-MAIL FROM ARIFF PREMJI AT ARISTA NETWORKS TO
10:06:04 15 ADAM SWEENEY AND ANSHUL SADANA?

10:06:08 16 A. RIGHT.

10:06:08 17 Q. HE SAYS AT THE TOP, FOR COMPLETENESS HERE, THE MS
10:06:12 18 SPREADSHEETS; RIGHT?

10:06:13 19 A. YES.

10:06:13 20 Q. AND I WANT TO SWITCH NOW TO 6511 AND LOOK AT THE NATIVE
10:06:19 21 VERSION SO THAT WE WILL BE ABLE TO READ IT, AND LOOK AT THE
10:06:23 22 LINE WE WERE TALKING ABOUT.

10:06:24 23 NOW FIRST OF ALL, IT'S A LITTLE BIT HARD TO READ EVEN ON
10:06:28 24 THE NATIVE, BUT YOU UNDERSTAND THAT MICROSOFT ENTERED POINTS.
10:06:38 25 YOU SEE 300, 600, 500, 900, 1,000, ET CETERA THERE; RIGHT.

10:06:43 1

A. YES.

10:06:44 2

Q. AND YOU UNDERSTAND THAT MICROSOFT WAS RANKING THE

10:06:51 3

IMPORTANCE OF FEATURE OF THESE FEATURES; RIGHT?

10:06:52 4

A. I UNDERSTAND THE POINTS RELATED TO THE IMPORTANCE OF THE

10:06:55 5

FEATURES.

10:06:55 6

Q. AND THEY PROVIDED A KEY AT THE BACK THAT EXPLAINED WHAT

10:06:58 7

EACH NUMBER RANGE CORRESPONDED TO, IN THEIR VIEW, IN TERMS OF

10:07:06 8

IMPORTANCE?

10:07:27 9

A. YES, I REMEMBER THAT.

10:07:28 10

Q. SO DO YOU SEE THERE THAT THERE'S AN ITEM "FAMILIAR

10:07:33 11

COMMAND-LINE INTERFACE" THAT MICROSOFT ENTERED IN ITS

10:07:35 12

SPREADSHEET?

10:07:38 13

A. YES.

10:07:38 14

Q. AND THE RANK POINTS THAT MICROSOFT ASSIGNED TO FAMILIAR

10:07:43 15

COMMAND-LINE INTERFACE WAS 100 POINTS; RIGHT?

10:07:44 16

A. YES. THOUGH THAT IS NOT THE ONLY REFERENCE TO THE CLI IN

10:07:48 17

THE DOCUMENT.

10:07:48 18

Q. AND IF WE NOW GO LOOK AT THE KEY TO SEE WHAT THAT

10:07:55 19

CORRESPONDS TO. SO HERE -- AND AGAIN IT'S NOT THE EASIEST

10:08:01 20

THING TO READ, BUT YOU SEE 1 TO 599 POINTS. WHAT THAT

10:08:07 21

CORRESPONDS TO IS INFORMATIONAL REQUESTS, FEATURES WE HAVE NO

10:08:12 22

PARTICULAR PLANS TO USE; RIGHT?

10:08:14 23

A. I DO SEE THAT.

10:08:15 24

Q. SO YOU UNDERSTAND THAT MICROSOFT SAID IN THIS RFP THAT A

10:08:19 25

FAMILIAR COMMAND-LINE INTERFACE WAS A FEATURE OF LOW IMPORTANCE

10:08:25 1 AND A FEATURE IT HAS NO PARTICULAR PLANS TO USE?

10:08:28 2 A. AGAIN, THAT'S NOT THE ONLY REFERENCE TO THE COMMAND-LINE
10:08:31 3 INTERFACE IN THE DOCUMENT, BUT YES, I SEE THAT THAT MAPS OUT
10:08:36 4 THAT WAY.

10:08:36 5 Q. RIGHT. WHAT YOU ARE REFERRING TO, AND WE LOOKED AT IT
10:08:39 6 BRIEFLY, WHAT YOU ARE REFERRING TO IS THERE'S A SEPARATE ENTRY
10:08:42 7 IN THE SPREADSHEET THAT JUST SAYS CLI; RIGHT?

10:08:46 8 A. YES.

10:08:46 9 Q. AND SO THEY WANTED A CLI, THEY GAVE THAT MORE POINTS;
10:08:50 10 RIGHT?

10:08:50 11 A. UH-HUH.

10:08:51 12 Q. BUT -- THEY GAVE THAT MORE POINTS THAN THE FAMILIAR ONE;
10:08:55 13 RIGHT?

10:08:55 14 A. YES.

10:08:55 15 Q. AND SO THEY HAD ONE ENTRY FOR CLI THAT THEY GAVE A CERTAIN
10:08:59 16 NUMBER OF POINTS TO, CORRECT?

10:09:02 17 A. RIGHT.

10:09:02 18 Q. AND THEY HAD A SEPARATE ENTRY FOR FAMILIAR COMMAND-LINE
10:09:06 19 INTERFACE?

10:09:07 20 A. YES.

10:09:07 21 Q. AND THAT'S THE ONE WHERE THEY ASSIGNED THE NUMBER OF
10:09:10 22 POINTS THAT CORRESPONDED TO LOW IMPORTANCE AND FEATURE, WE HAVE
10:09:13 23 NO PARTICULAR PLANS TO USE; RIGHT?

10:09:15 24 A. RIGHT.

10:09:16 25 Q. OKAY. YOU CAN PUT THAT ASIDE.

10:09:21 1 AGAIN, WITH RESPECT TO MICROSOFT, YOU ALSO CONSIDERED
10:09:24 2 INTERNAL CISCO DOCUMENTATION; RIGHT.

10:09:26 3 A. YES.

10:09:27 4 Q. I WANT TO ASK YOU, PLEASE, TO LOOK AT EXHIBIT 5495. THIS
10:09:45 5 IS A DOCUMENT THAT SAYS "CHAMBERS ONE-TO-ONE PHONE BRIEFING
10:09:48 6 MICROSOFT" ON TOP.

10:09:49 7 THIS IS A DOCUMENT THAT YOU CONSIDERED IN FORMING YOUR
10:09:51 8 OPINIONS IN THIS CASE; RIGHT?

10:09:52 9 A. RIGHT.

10:09:55 10 Q. AND IT RELATES TO MICROSOFT, CORRECT?

10:09:57 11 A. YES.

10:10:03 12 MR. SILBERT: YOUR HONOR, I OFFER 5495.

10:10:06 13 MR. PAK: NO OBJECTION, YOUR HONOR.

10:10:07 14 THE COURT: IT WILL BE ADMITTED.

10:10:09 15 (DEFENDANT'S EXHIBIT 5495 WAS ADMITTED INTO EVIDENCE.)

10:10:09 16 BY MR. SILBERT:

10:10:09 17 Q. AND YOU WILL SEE THE TITLE WHICH IS IN THAT GRAY BOX IS
10:10:12 18 UNFORTUNATELY PRETTY HARD TO READ BECAUSE IT'S GRAYED OUT. DO
10:10:17 19 YOU SEE ORGANIZATION NAME "MICROSOFT;" RIGHT?

10:10:19 20 A. YES.

10:10:20 21 Q. AND IT SAYS THE DATE, TIME, LOCATION, IT SAYS TBD, PREFER
10:10:26 22 NO LATER THAN MARCH 11, 2011; RIGHT?

10:10:29 23 A. YES.

10:10:29 24 Q. AND WHERE IT SAYS, "CHAMBERS ONE-TO-ONE PHONE BRIEFING
10:10:35 25 MICROSOFT," YOU UNDERSTAND THAT JOHN CHAMBERS WAS THE CEO OF

10:10:39 1 CISCO AT THIS TIME; RIGHT?

10:10:40 2 A. YES.

10:10:47 3 Q. AND I WANT TO LOOK AT SOME THINGS HE'S TOLD IN THIS
10:10:50 4 BRIEFING.

10:10:51 5 SO WHAT MR. CHAMBERS IS TOLD IN THIS BRIEFING, FIRST
10:10:57 6 FOR -- THE FIRST BULLET POINT UNDER JOHN'S AND CISCO'S
10:11:00 7 OBJECTIVES WAS, "BLOCK ARISTA FROM GAINING A FIRST PRODUCTION
10:11:03 8 DEPLOYMENT AT MICROSOFT IN WHAT IS CALLED THE SPINE, A
10:11:10 9 STRATEGIC LAYER IN THE MEGASCALE DATA CENTER?"

10:11:14 10 A. YES.

10:11:14 11 Q. AND THEN UNDER "BACKGROUND," THAT LITTLE BULLET POINT, IT
10:11:18 12 SAYS, "MICROSOFT SEARCH IS ON THE VERGE OF DEPLOYING A
10:11:23 13 \$2 MILLION INVESTMENT WITH ARISTA WHICH WOULD REPRESENT A
10:11:25 14 SIGNIFICANT BEACHHEAD. SEARCH IS THE CANARY IN THE COAL MINE
10:11:31 15 AZURE, OFFICE 365 AND OTHER ONLINE PROPERTIES WILL FOLLOW.
10:11:35 16 ONLINE IS A \$100 MILLION ANNUAL FRANCHISE FOR CISCO."

10:11:41 17 DO YOU SEE THAT?

10:11:42 18 A. YES.

10:11:42 19 Q. YOU UNDERSTAND MR. CHAMBERS WAS BEING TOLD IN 2011 THAT HE
10:11:48 20 NEEDED TO BLOCK ARISTA FROM GAINING A FIRST PRODUCTION
10:11:51 21 DEPLOYMENT; RIGHT?

10:11:52 22 A. THAT'S WHAT IT SAYS.

10:11:53 23 Q. OKAY. AND THEN IF WE COULD PLEASE GO TO THE NEXT PAGE.

10:12:08 24 IF YOU LOOK AT THE BULLET POINT THERE, WHAT MR. CHAMBERS
10:12:11 25 WAS TOLD IS, "ARISTA IS OUTPERFORMING CISCO ON PRICE, PRODUCT,

10:12:17 1 ROAD MAP AND VISION. BASED ON MULTIPLE MISSED CISCO ROAD MAP
10:12:22 2 COMMITMENTS IN THE DATA CENTER, MICROSOFT FEELS LESS RISK WITH
10:12:28 3 UNPROVEN ARISTA;" RIGHT?
10:12:31 4 A. YES, I SEE THAT.
10:12:32 5 Q. NOW YOU KNOW THIS IS A CISCO DOCUMENT THAT WAS PROVIDED TO
10:12:35 6 US IN DISCOVERY; RIGHT?
10:12:36 7 A. YES.
10:12:36 8 Q. YOU UNDERSTAND THAT THIS STATEMENT "ARISTA IS
10:12:40 9 OUTPERFORMING CISCO ON PRICE, PRODUCT, ROAD MAP AND VISION,"
10:12:50 10 THAT'S WHAT CISCO'S CEO JOHN CHAMBERS WAS BEING TOLD BY HIS OWN
10:12:54 11 EMPLOYEES IN 2011; RIGHT?
10:12:57 12 A. YES, THAT'S EXACTLY THE KIND OF THING YOU WOULD EXPECT IN
10:13:01 13 THIS KIND OF DOCUMENT.
10:13:02 14 Q. OKAY. WELL, LET'S LOOK AT ANOTHER ONE. YOU CAN PUT THAT
10:13:11 15 ASIDE.
10:13:12 16 WOULD YOU PLEASE LOOK AT EXHIBIT 5219. THIS IS AN E-MAIL
10:13:31 17 EXCHANGE BETWEEN CISCO EMPLOYEES, CORRECT?
10:13:33 18 A. OKAY.
10:13:35 19 Q. DO YOU SEE THAT EXHIBIT 5219 IS AN E-MAIL EXCHANGE BETWEEN
10:13:40 20 CISCO EMPLOYEES?
10:13:40 21 A. YES.
10:13:41 22 Q. AND IT CONCERNS MICROSOFT; RIGHT?
10:13:43 23 A. YES.
10:13:43 24 Q. AND THIS WAS ONE OF THE DOCUMENTS THAT YOU CONSIDERED IN
10:13:45 25 FORMING YOUR OPINIONS IN THIS CASE; RIGHT?

10:13:48 1

A. YES.

10:13:48 2

Q. OKAY.

10:13:49 3

MR. SILBERT: I OFFER 5219, YOUR HONOR.

10:13:51 4

MR. PAK: NO OBJECTION, YOUR HONOR.

10:13:52 5

THE COURT: IT WILL BE ADMITTED.

10:13:54 6

(DEFENDANT'S EXHIBIT 5219 WAS ADMITTED INTO EVIDENCE.)

10:13:54 7

BY MR. SILBERT:

10:13:54 8

Q. AND IF YOU LOOK, PLEASE, TO THE BOTTOM OF THE PAGE TO THE

10:13:58 9

E-MAIL FROM SONI JIANDANI AT THE BOTTOM.

10:14:14 10

YOU UNDERSTAND THAT MS. JIANDANI WAS A VERY HIGH RANKING

10:14:18 11

EXECUTIVE AT CISCO; RIGHT?

10:14:20 12

A. YES.

10:14:20 13

Q. AND IF YOU LOOK WHERE HE SAYS, "WHEN WE LOST," STARTING AT

10:14:27 14

THE THIRD LINE -- "WHEN WE LOST AZURE LAST TIME TO ARISTA" --

10:14:32 15

LET ME STOP THERE.

10:14:33 16

AZURE, YOU UNDERSTAND, IS A MICROSOFT CLOUD SERVICE;

10:14:36 17

RIGHT?

10:14:36 18

A. CORRECT.

10:14:37 19

Q. "WHEN WE LOST AZURE LAST TIME TO ARISTA, CISCO OFFERED

10:14:41 20

THEM NEXUS 7K FOR FREE UNTIL WE WERE GOING TO SHIP FT CARDS.

10:14:47 21

MICROSOFT REFUSED THAT OFFER AND WENT WITH ARISTA."

10:14:50 22

DO YOU SEE THAT?

10:14:51 23

A. YES.

10:14:51 24

Q. THEN SHE GOES ON, "IN THE CURRENT SITUATION, OUR BIGGEST

10:14:55 25

HOPE WAS NEXUS 6004, WHICH WAS OFFERED CLOSE TO COG, WHICH WAS

10:15:02 1 ALSO DENIED BY MICROSOFT IN FAVOR OF ARISTA 7508 CHASSIS AND
10:15:06 2 THE EQUIVALENT OF 3132."

10:15:09 3 DO YOU SEE THAT?

10:15:10 4 A. YES.

10:15:10 5 Q. NOW CLOSE TO COGS, YOU UNDERSTAND THAT TO MEAN COST OF
10:15:15 6 GOODS SOLD?

10:15:15 7 A. YES.

10:15:18 8 Q. AND THAT MEANS MICROSOFT WAS OFFERING THIS CLOSE TO A
10:15:21 9 PRICE WHERE THEY WOULD MAKE NO GROSS PROFIT AT ALL; RIGHT?

10:15:25 10 A. RIGHT.

10:15:25 11 Q. AND WHAT MS. JIANDANI SAYS HERE IS THAT, EVEN AT THAT
10:15:29 12 PRICE, MICROSOFT STILL REJECTED US AND WENT WITH ARISTA?

10:15:32 13 A. FOR THIS ORDER, YES.

10:15:33 14 Q. AND IF YOU GO TO THE NEXT PAGE THERE, SHE CONTINUES, "HERE
10:15:36 15 WE ARE ARGUING ON WHETHER THIS IS A RING FENCED DEAL IN 2013
10:15:40 16 KNOWING THAT WE HAVE FAILED TO DELIVER CRITICAL FEATURES FOR
10:15:45 17 MICROSOFT FOR THE LAST FIVE MONTHS OF THEM ASKING REPEATEDLY
10:15:49 18 FOR WARM REBOOT DONE PER THEIR SPECIFICATION ON NEXUS 3064 AND
10:15:54 19 NEXUS 3132 AND CISCO STILL NOT BEING IN A POSITION TO DELIVER
10:16:01 20 TO THEIR SPECS.

10:16:03 21 IN THE INTERIM, ARISTA IS BUSY EXECUTING AND DELIVERING TO
10:16:08 22 WHAT THE CUSTOMER HAD REQUESTED FIVE MONTHS AGO."

10:16:12 23 DO YOU SEE ALL OF THAT LANGUAGE?

10:16:14 24 A. YES.

10:16:14 25 Q. AND THIS IS LANGUAGE YOU CONSIDERED ALSO IN FORMING YOUR

10:16:16 1 OPINIONS FOR THIS CASE; RIGHT?

10:16:17 2 A. YES, FOR SURE.

10:16:19 3 AND THIS IS EXACTLY WHAT COMPETITIVE COMPANIES THAT ARE
10:16:22 4 INNOVATING, THIS IS THE KIND OF E-MAIL THEY SHOULD BE SENDING
10:16:27 5 EACH OTHER.

10:16:27 6 Q. OKAY. GOOD. WE ARE GOING TO TALK ABOUT INNOVATION TOO,
10:16:31 7 BUT I WANT TO TALK ABOUT YOUR RELIANCE ON THE OTHER MATERIALS
10:16:36 8 THAT YOU RELIED ON.

10:16:37 9 YOU TALKED ABOUT MR. SADANA'S TESTIMONY. YOU MENTIONED
10:16:40 10 SOME TESTIMONY FROM OR SOME STATEMENTS BY MR. DUDA; RIGHT?

10:16:43 11 A. CORRECT.

10:16:44 12 Q. NOW YOUR OPINION, AGAIN, JUST TO SET THE FRAME, IF YOU
10:16:52 13 FOUND ANY PARTICULAR EVIDENCE AT ALL IN THE RECORD THAT A
10:16:55 14 PARTICULAR CUSTOMER PREFERRED A CISCO-LIKE CLI, THOSE CUSTOMERS
10:17:00 15 ARE IN SCENARIOS 1 OR 2, YOUR SCENARIOS 1 OR 2; RIGHT?

10:17:04 16 A. I WOULDN'T SAY ANY, BUT IF I HAD SPECIFIC EVIDENCE FOR THE
10:17:07 17 SPECIFIC CUSTOMER, THEY SHOULD BE IN SCENARIO 1 AND 2.

10:17:10 18 Q. OKAY. AND THE OPINION THAT YOU EXPRESSED HERE IN COURT IS
10:17:14 19 THAT ARISTA WOULD HAVE BEEN UNABLE TO MAKE 80 PERCENT OF ALL OF
10:17:19 20 ITS SALES, HAD IT NOT INFRINGED THE COPYRIGHT -- CISCO'S
10:17:23 21 COPYRIGHTS ON CISCO'S CLI; RIGHT?

10:17:25 22 A. CORRECT.

10:17:26 23 Q. AND YOU GET THAT 80 PERCENT NUMBER, YOU GOT THAT FROM A
10:17:30 24 BLOG POST BY KEN DUDA; RIGHT?

10:17:33 25 A. THE 80 PERCENT NUMBER IS IN PART FROM THE BLOG POST OF KEN

10:17:43 1

DUDA.

10:17:43 2

Q. AND WHAT HE SAID WAS SOMETHING ALONG THE LINES OF

10:17:46 3

20 PERCENT OF OUR CUSTOMERS USE A PURE LINUX APPROACH; RIGHT?

10:17:49 4

A. HE DID SAY THAT.

10:17:50 5

Q. OKAY. AND HE ALSO SAID THAT HE DIDN'T INTEND THAT NUMBER

10:17:54 6

TO BE QUANTITATIVELY CORRECT; RIGHT?

10:17:56 7

A. ACTUALLY, WHAT HE SAID IN HIS DEPOSITION TESTIMONY WAS

10:17:59 8

THAT HE WAS NOT SURE IT WAS COMPLETELY ACCURATE, WHICH IS

10:18:04 9

WHY -- I MEAN, IT WASN'T SPECIFICALLY, HE WASN'T A HUNDRED

10:18:08 10

PERCENT SURE OF THE NUMBER.

10:18:10 11

AND SO THAT'S WHY I LOOKED AT SOME OTHER INFORMATION IN

10:18:15 12

ORDER TO USE IT AND DECIDE IT WAS, INDEED, A BIT OF A

10:18:21 13

CONSERVATIVE ESTIMATE.

10:18:22 14

Q. YOU ALSO HEARD MR. DUDA SAY THAT CLOUD CUSTOMERS, FOR

10:18:26 15

EXAMPLE, REALLY DON'T CARE ABOUT THE FAMILIARITY OF A CLI?

10:18:29 16

A. ACTUALLY, I HAVEN'T HEARD MR. DUDA SAY THAT AT ALL.

10:18:32 17

Q. DID YOU HEAR HIM TESTIFY TO THAT EFFECT IN COURT?

10:18:35 18

A. WELL, SPECIFICALLY I HEARD HIM DISCUSS THE SCRIPT WRITTEN

10:18:43 19

TO THE CLI AND THE FACT THAT THEY ARE USING THE CLI.

10:18:45 20

Q. OKAY. YOU DID TESTIFY WHEN MR. PAK WAS QUESTIONING YOU,

10:18:50 21

THAT YOU EITHER SAT THROUGH ALL OF THE TRIAL TESTIMONY OR IF

10:18:53 22

YOU DIDN'T SIT THROUGH IT, YOU READ IT; RIGHT?

10:18:55 23

A. YEAH, ABSOLUTELY.

10:18:56 24

Q. DID YOU READ THE TESTIMONY FROM MR. DUDA SAYING THAT CLOUD

10:18:59 25

CUSTOMERS, AS A RULE, DON'T CARE WHETHER OR NOT THEY HAVE A

10:19:02 1
10:19:05 2
10:19:15 3
10:19:18 4
10:19:20 5
10:19:23 6
10:19:23 7
10:19:23 8
10:19:28 9
10:19:28 10
10:19:29 11
10:19:31 12
10:19:31 13
10:19:35 14
10:19:42 15
10:19:45 16
10:19:48 17
10:19:51 18
10:19:52 19
10:19:57 20
10:19:59 21
10:20:05 22
10:20:13 23
10:20:13 24
10:20:19 25

FAMILIAR CLI?

A. SO WE COULD LOOK AT THE TESTIMONY AGAIN, I READ IT SLIGHTLY DIFFERENTLY, AND THEN HE WENT ON TO TALK ABOUT THE AUTOMATIVE SCRIPT AND THE USE OF CLI.

Q. OKAY. YOU ALSO TALKED ABOUT TESTIMONY FROM MR. SADANA, RIGHT?

A. YES.

Q. AND YOU ALSO HEARD MR. SADANA TESTIFY IN COURT HERE PREVIOUSLY, RIGHT?

A. YES, I UNDERSTAND.

Q. AND YOU UNDERSTAND HE'S GOING TO TESTIFY AGAIN; RIGHT?

A. YES.

Q. NOW THE TESTIMONY THAT YOU QUOTED FROM MEMORY ON THE STAND, YOU KNOW THAT CAME IN A LINE OF QUESTIONS THAT CONCERNED THE YEARS 2008 TO 2009; RIGHT?

A. THAT PARTICULAR ANSWER DID, THE ONE I MENTIONED ON THE STAND, THOUGH HE DISCUSSED IT MORE IN THE DEPOSITION THAN THAT.

Q. WELL, HE DID.

AND YOU KNOW CERTAINLY, THAT 2008, 2009 IS NOT -- IS BEFORE THE STATUTE OF LIMITATIONS IN THIS CASE; RIGHT?

A. YES. I DO KNOW THAT, THOUGH OF COURSE GIVEN ARISTA'S LAND AND EXPANSE STRATEGY, ACTIONS TAKEN IN 2008 AND 2009 WILL AFFECT SALES LATER.

Q. YOU KNOW THAT MR. SADANA ALSO SAID THAT WEB CUSTOMERS, AND OTHER TYPES OF CUSTOMERS EXPRESS NO PARTICULAR PREFERENCE FOR

10:20:22 1
10:20:25 2
10:20:27 3
10:20:31 4
10:20:38 5
10:20:43 6
10:20:44 7
10:20:46 8
10:20:51 9
10:20:55 10
10:20:58 11
10:20:59 12
10:21:04 13
10:21:04 14
10:21:05 15
10:21:08 16
10:21:12 17
10:21:13 18
10:21:15 19
10:21:19 20
10:21:21 21
10:21:22 22
10:21:27 23
10:21:31 24
10:21:33 25

THE CLI IN HIS TESTIMONY?

A. YOU MEAN IN HIS LIVE TESTIMONY?

Q. WELL, NO I'M REFERRING TO HIS DEPOSITION TESTIMONY?

A. OKAY. SO I REMEMBER THAT HE WAS ASKED WHETHER EVEN TODAY HE FELT THEY HAD THE FLEXIBILITY TO NOT USE THE CISCO CLI, AND HE SAID NO.

Q. DO YOU RECALL THAT HE WAS ASKED WITH RESPECT TO WEB CUSTOMERS, THAT YOU WERE SPEAKING WITH IN THE 2008 TO 2010 TIME PERIOD, DID THEY EXPRESS ANY PARTICULAR PREFERENCE FOR CISCO-LIKE CLI, AND HE GAVE THE ANSWER NO.

A. OKAY.

Q. OKAY. WE LOOKED PREVIOUSLY AT AN RFP FROM MICROSOFT; RIGHT?

A. YES.

Q. AND IT HAD THE ENTRY FOR FAMILIAR COMMAND-LINE INTERFACE AND IT HAD THE NUMBER CORRESPONDING TO A FEATURE WE HAVE NO PARTICULAR PLANS TO USE; RIGHT?

A. THAT'S WHAT IT CORRESPONDED TO.

Q. WE LOOKED AT THE RFP PREVIOUSLY FROM FACEBOOK THAT DIDN'T EVEN MENTION A CLI AT ALL; RIGHT?

A. YES.

Q. YOU UNDERSTAND THAT CLOUD DATA CENTERS ARE MASSIVELY SCALED DATA CENTERS THAT HOUSE THOUSANDS OF SERVERS CONNECTED BY HIGH SPEED NETWORK SWITCHES; RIGHT?

A. RIGHT.

10:21:34 1 Q. YOU RECOGNIZE THAT AS A QUOTE FROM YOUR REPORT; RIGHT?

10:21:37 2 A. RIGHT.

10:21:38 3 Q. YOU UNDERSTAND THAT CLOUD DATA CENTERS REQUIRE SIMPLER AND

10:21:40 4 MORE AUTOMATED MANAGEMENT CAPABILITIES; RIGHT?

10:21:43 5 A. RIGHT.

10:21:44 6 Q. YOU UNDERSTAND THAT AUTOMATION TOOLS AS A LAYER BETWEEN A

10:21:51 7 HUMAN OPERATOR AND THE CLI; RIGHT?

10:21:53 8 A. RIGHT.

10:21:53 9 Q. OKAY. AND YOU'VE ALSO SEEN CISCO DOCUMENTS THAT TALK

10:22:00 10 ABOUT THE CLI WITH RESPECT TO CLOUD CUSTOMERS, CORRECT?

10:22:02 11 A. YES.

10:22:03 12 Q. WOULD YOU LOOK PLEASE AT EXHIBIT 5496. YOU RECOGNIZE THIS

10:22:25 13 AS A CISCO SLIDE DECK?

10:22:30 14 A. YES.

10:22:30 15 Q. THIS IS ONE OF THE DOCUMENTS YOU CONSIDERED IN FORMING

10:22:35 16 YOUR OPINIONS IN THIS CASE?

10:22:36 17 A. RIGHT.

10:22:37 18 MR. SILBERT: YOUR HONOR, I OFFER 5496.

10:22:39 19 MR. PAK: NO OBJECTION.

10:22:39 20 THE COURT: IT WILL BE ADMITTED.

10:22:40 21 (DEFENDANT'S EXHIBIT 5496 WAS ADMITTED INTO EVIDENCE.)

10:22:40 22 BY MR. SILBERT:

10:22:41 23 Q. I WANT TO ASK YOU TO TURN TO PAGE 7, IT'S THE SLIDE WITH

10:22:44 24 THE HEADING "ARISTA COMPETITIVE WEB VIEW."

10:22:55 25 A. YES.

10:22:55 1 Q. FIRST OF ALL, IF YOU LOOK UNDER THE HEADING IN THIS CISCO
10:23:00 2 SLIDE DECK UNDER "ARISTA COMPETITIVE VIEW" UNDER WHY THEY WIN,
10:23:04 3 THERE'S FACTORS LISTED THERE?
10:23:05 4 A. RIGHT.
10:23:06 5 Q. YOU SEE THINGS LIKE "RIFLE FOCUS ON WEB MARKET, TARGETED
10:23:11 6 VALUE PROP AND INVESTMENT," CORRECT?
10:23:13 7 A. CORRECT.
10:23:14 8 Q. THEN CISCO LISTED MORE OPEN OS WITH RAPID INTEGRATION OF
10:23:18 9 THIRD PARTY APPS BUILT ON VANILLA LINUX BASE; RIGHT?
10:23:22 10 A. RIGHT.
10:23:22 11 Q. AND IF YOU THEN LOOK FURTHER DOWN UNDER THE HEADING
10:23:29 12 "INVEST TO CLOSE GAP," YOU UNDERSTAND THIS IS CISCO SAYING
10:23:32 13 HERE'S WHAT WE NEED TO INVEST IN TO CLOSE THE GAP; RIGHT?
10:23:35 14 A. YEAH.
10:23:36 15 Q. AND WHAT THEY WRITE IS, "NEED TO INVEST IN NX-OS
10:23:44 16 OPERATIONAL FUNDAMENTALS."
10:23:47 17 AND YOU UNDERSTAND NX-OS IS THE OPERATING SYSTEM?
10:23:51 18 A. RIGHT.
10:23:51 19 Q. THAT'S ONE OF CISCO'S SWITCH OPERATING SYSTEMS?
10:23:53 20 A. CORRECT.
10:23:53 21 Q. THAT'S THE OPERATING SYSTEM THAT THEY TARGET FOR DATA
10:23:55 22 CENTERS; RIGHT?
10:23:56 23 A. RIGHT.
10:23:59 24 Q. AND THEN THEY GO ON TO SAY, "CLI NOT ALIGNED TO CLOUD
10:24:10 25 AUTOMATION TOOLS?"

10:24:10 1

A. YES.

10:24:10 2

Q. NOW YOU HAD ACCESS TO ARISTA'S SALES DATA AND OTHER DATA THAT SHOW THE PORTION OF ARISTA SALES THAT GO TO CLOUD COMPANIES; RIGHT?

10:24:14 3

10:24:20 4

10:24:21 5

A. RIGHT.

10:24:22 6

Q. AND IN FACT, YOU AGREE THAT ARISTA PRIMARILY SERVES CUSTOMERS OPERATING PUBLIC OR PRIVATE CLOUDS, CORRECT?

10:24:37 7

10:24:41 8

A. CORRECT.

10:24:42 9

Q. OKAY. AND IF YOU WANTED TO DETERMINE THE AMOUNT OF ARISTA'S REVENUES THAT, FOR EXAMPLE, WENT TO CLOUD CUSTOMERS LIKE FACEBOOK, MICROSOFT, GOOGLE, YAHOO, OTHER COMPANIES LIKE THAT, YOU EASILY COULD HAVE DONE THAT; RIGHT?

10:24:47 10

10:24:51 11

10:24:56 12

10:25:00 13

A. YES.

10:25:00 14

Q. OKAY. LET'S TALK BRIEFLY ABOUT THE -- YOUR PATENT OPINION.

10:25:09 15

10:25:10 16

A. OKAY.

10:25:10 17

Q. SO YOU JUST DISCUSSED THIS SLIDE WITH THE JURY; RIGHT, AND JUST TO BE CLEAR, YOU'RE ASKING FOR \$311 TO \$335 MILLION COPYRIGHT LOST PROFITS DAMAGES; RIGHT?

10:25:24 18

10:25:33 19

10:25:35 20

A. MY OPINION IS THAT'S WHAT IT IS, YES.

10:25:37 21

Q. OKAY. AND THEN YOU ARE NOT DONE THERE, BECAUSE YOU ARE GOING TO COME BACK AND OPINE THE NUMBER OUGHT TO BE HIGHER AND THAT'S WHAT THIS SECOND BLUE BOX REFERS TO FOR DISGORGEMENT?

10:25:41 22

10:25:46 23

10:25:50 24

A. WELL, SO -- YEAH. I MEAN THE -- YES, THERE WILL BE PART OF THAT \$1.3 BILLION.

10:25:54 25

10:25:57 1 Q. AND THEN THE DARK BLUE BOX AT THE BOTTOM REPRESENTS YOUR
10:26:06 2 PATENT DAMAGES?

10:26:07 3 A. RIGHT.

10:26:07 4 Q. AND NOW YOUR PATENT IS DIRECTED TO THE CLI; RIGHT?

10:26:11 5 A. THE PATENT IS -- PROVIDES A FUNCTIONALITY OVER THE CLI,
10:26:15 6 YES.

10:26:15 7 Q. OKAY. AND YOUR NUMBER FOR THE PATENT IS 2 MILLION TO
10:26:21 8 2.2 MILLION, CORRECT?

10:26:23 9 A. CORRECT.

10:26:23 10 Q. AND THAT'S BASED ON EVIDENCE AND INFORMATION YOU'VE SEEN
10:26:26 11 IN THE CASE ABOUT A DESIGN-AROUND THAT ARISTA COULD IMPLEMENT;
10:26:30 12 RIGHT?

10:26:30 13 A. CORRECT.

10:26:31 14 Q. AND AGAIN, I BELIEVE YOU EXPLAINED, BUT A DESIGN-AROUND IS
10:26:34 15 JUST BASICALLY, DO WHATEVER YOU NEED TO DO TO NOT INFRINGE AND
10:26:39 16 THEN YOU ARE DONE WITH IT; RIGHT?

10:26:40 17 A. YES.

10:26:41 18 Q. OKAY. THAT'S A TECHNICAL DEFINITION.

10:26:45 19 A. I WILL LET YOU --

10:26:47 20 Q. THANK YOU.

10:26:48 21 AND THIS 2 TO \$2.2 MILLION OPINION THAT YOU'VE OFFERED,
10:26:54 22 THIS IS THE ONLY OPINION ON ANY ACTUAL DAMAGES NUMBER WITH
10:26:58 23 RESPECT TO THE PATENT CASE THAT YOU'VE OFFERED; RIGHT?

10:27:00 24 A. THAT IS, YES.

10:27:03 25 Q. WOULD YOU PLEASE LOOK AT EXHIBIT 5168, WHICH IS IN YOUR

10:27:23 1 BINDER WHICH IS IN EVIDENCE. THIS IS THE CISCO SLIDE DECK
10:27:29 2 THAT -- THIS IS THE CISCO SLIDE DECK THAT WAS DISCUSSED WITH
10:27:44 3 MR. REMAKER PREVIOUSLY, IT'S CALLED "INNOVATION AT CISCO;"
10:27:47 4 RIGHT?

10:27:47 5 A. RIGHT.

10:27:48 6 Q. AND IT'S DATED SEPTEMBER 2013; RIGHT?

10:27:51 7 A. YES.

10:27:52 8 Q. AND THIS IS SOMETHING THAT YOU READ AND CONSIDERED IN
10:27:55 9 FORMING YOUR OPINIONS IN THIS CASE; RIGHT?

10:27:57 10 A. YES.

10:27:57 11 Q. IF YOU LOOK AT THE NEXT PAGE UNDER "EXECUTIVE SUMMARY,"
10:28:05 12 FOR EXAMPLE UNDER THE SECOND BULLET POINT IN THE SECOND SUB
10:28:13 13 BULLET THERE YOU READ THE STATEMENT IN THE CISCO SLIDE DECK,
10:28:16 14 "OUR ORGANIZATION AND POLICIES ARE TOO RIGID TO SUPPORT
10:28:19 15 INNOVATION;" RIGHT?

10:28:20 16 A. YES.

10:28:21 17 Q. AND THEN GOING DOWN TO THE NEXT ONE, YOU READ THE
10:28:26 18 STATEMENT "INCENTIVES AND CULTURE DON'T PROMOTE INNOVATION;"
10:28:30 19 RIGHT?

10:28:30 20 A. YES.

10:28:31 21 Q. IF YOU GO ON TWO PAGES IN -- TWO SLIDES IN, I GUESS, TO
10:28:40 22 THE HEADING, "PROBLEM STATEMENT."

10:28:42 23 THE BULLET AT BOTTOM THERE, "OUR INNOVATIVE CULTURE HAS
10:28:46 24 STALLED AND LEADERSHIP HAS NOT REACTED AS QUICKLY AS IT SHOULD
10:28:50 25 TO REIGNITE AN INNOVATIVE CULTURE ACROSS ALL LEVELS."

10:28:56 1 YOU READ THAT; RIGHT?

10:28:57 2 A. YES.

10:28:57 3 Q. AND IF YOU GO DOWN TO PAGE 15, YOU SEE THE HEADING OF THAT
10:29:04 4 SLIDE, "WE HAVE STRONG TALENT BUT LACK THE CULTURE REQUIRED TO
10:29:07 5 SUPPORT BREAKTHROUGH INNOVATION;" YOU READ THAT, CORRECT?

10:29:12 6 A. YES.

10:29:12 7 Q. IF YOU GO TO TWO MORE SLIDES IN, PAGE 17, YEAH, AND THIS
10:29:24 8 SLIDE TALKS ABOUT SIX PRIMARY INNOVATION BARRIERS.

10:29:28 9 DO YOU SEE NUMBER ONE, "WE DO NOT COMMIT RESOURCES TO
10:29:34 10 AMBITIOUS INNOVATION, MULTI-YEAR FUNDING ENGINEER'S TIME."

10:29:38 11 YOU READ THAT; RIGHT?

10:29:39 12 A. YES.

10:29:39 13 Q. NUMBER TWO, "WE HOLD OUR LEADERS ACCOUNTABLE FOR
10:29:44 14 SHORT-TERM METRICS AND LACK LONGER TERM INNOVATION METRICS."

10:29:50 15 YOU ALSO READ THAT TERM?

10:29:51 16 A. YES.

10:29:52 17 Q. NUMBER FOUR, "OUR PROCESSES AND POLICIES SLOW DOWN OUR
10:29:57 18 INNOVATION DISCOURAGE PEOPLE FROM TRYING;" YOU READ THAT,
10:30:00 19 RIGHT?

10:30:00 20 A. YES.

10:30:01 21 Q. ISN'T IT TRUE, DR. CHEVALIER, THAT CISCO'S INABILITY TO
10:30:04 22 INNOVATE IS THE MAIN REASON THAT CISCO IS LOSING OPPORTUNITIES
10:30:09 23 TO MORE INNOVATIVE COMPETITORS?

10:30:13 24 A. SO FIRST OF ALL, I THINK CISCO IS MANIFESTLY AN INNOVATIVE
10:30:20 25 COMPANY, AND BEATING ONES SELF UP ABOUT HOW INNOVATIVE ONE IS

10:30:26 1 IN INTERNAL DOCUMENTS, THAT'S WHAT YOU DO TO BE INNOVATIVE.

10:30:32 2 I THINK CERTAINLY, AS I'VE SAID BEFORE, THE CLI IS NOT A
10:30:35 3 REASON A CUSTOMER CHOOSES AN ARISTA SWITCH OVER A CISCO SWITCH
10:30:39 4 THAT, YOU KNOW, THERE ARE GOING TO BE BENEFITS THAT SPECIFIC
10:30:43 5 CUSTOMERS SEE IN SPECIFIC CASES.

10:30:47 6 CISCO CLEARLY STILL HAS A BIG MARKET SHARE AND IS CLEARLY
10:30:51 7 STILL INNOVATIVE COMPANY, BUT OF COURSE THEY ARE TRYING TO BE
10:30:54 8 BETTER.

10:30:54 9 MR. SILBERT: OKAY. NOTHING FURTHER.

10:30:58 10 THANK YOU.

10:31:00 11 THE COURT: REDIRECT FOR THIS WITNESS?

10:31:02 12 MR. PAK: YES, YOUR HONOR.

10:31:02 13 I'M GOING TO A BIT OF REDIRECT HERE, SO WOULD YOU LIKE TO
10:31:04 14 DO IT NOW OR --

10:31:04 15 THE COURT: WE WILL TAKE OUR BREAK.

10:31:02 16 MR. PAK: THANK YOU, YOUR HONOR.

10:31:06 17 THE COURT: ALL RIGHT. LET'S TAKE A 15-MINUTE BREAK.

10:33:08 18 (RECESS FROM 10:33 A.M. UNTIL 10:43 A.M.)

10:46:27 19 THE COURT: MR. PAK, YOU MAY PROCEED WITH YOUR
10:46:30 20 REDIRECT.

10:46:31 21 MR. PAK: THANK YOU, YOUR HONOR.

10:46:33 22 **REDIRECT EXAMINATION**

10:46:33 23 BY MR. PAK:

10:46:35 24 Q. GOOD MORNING, AGAIN.

10:46:36 25 A. GOOD MORNING, AGAIN.

10:46:36 1

Q. ALL RIGHT.

10:46:37 2

SO DR. CHEVALIER, I'M GOING TO ASK YOU A FEW QUESTIONS

10:46:40 3

BASED ON WHAT WE HEARD FROM MR. SILBERT TODAY.

10:46:43 4

A. SURE.

10:46:44 5

Q. SO LET'S GO BACK TO THE OPINIONS YOU PRESENTED TO THE

10:46:47 6

JURY. YOU PRESENTED A MARKET SHARE ANALYSIS; IS THAT CORRECT?

10:46:49 7

A. CORRECT.

10:46:49 8

Q. AND THAT WAS WHAT WAS CALLED SCENARIO 3 IN YOUR EXPERT

10:46:55 9

REPORT?

10:46:55 10

A. RIGHT.

10:46:55 11

Q. NOW MR. SILBERT ASKED YOU ABOUT A FEW OTHER SCENARIOS THAT

10:46:58 12

YOU HAD DEVELOPED THAT YOU DIDN'T PRESENT TO THE JURY, SCENARIO

10:47:01 13

1 AND 2; DO YOU RECALL THAT?

10:47:02 14

A. YES.

10:47:02 15

Q. AND YOU SAID SOMETHING IN YOUR CROSS-EXAMINATION, YOU SAID

10:47:07 16

THAT SCENARIOS 1 AND 2 WERE BASED ON AN INCOMPLETE RECORD.

10:47:12 17

AND CAN YOU EXPLAIN TO THE JURY WHAT YOU MEANT BY THOSE

10:47:17 18

COMMENTS AND THEN WE WILL ASK YOU A LITTLE BIT MORE ABOUT

10:47:19 19

SCENARIO 3?

10:47:20 20

A. SURE.

10:47:21 21

SO IN THE EXPERT REPORT, AS A CHECK ON MY SCENARIO 3 THAT

10:47:29 22

I PRESENTED TO YOU, I LOOKED AT SPECIFIC EVIDENCE FOR SPECIFIC

10:47:34 23

COMPANIES.

10:47:35 24

AND A CONCERN ABOUT THE EVIDENCE IN THIS CASE IS WE DON'T

10:47:38 25

HAVE EVIDENCE OF EVERY CONVERSATION. WE DON'T HAVE EVIDENCE OF

10:47:41 1 EVERY COMMUNICATION, WE DON'T HAVE -- THERE'S A LOT OF THINGS
10:47:44 2 MISSING.

10:47:45 3 AND SO THE RECORDS THAT WE HAVE ARE KIND OF BITS AND
10:47:48 4 PIECES FOR A SPECIFIC CUSTOMER. AND WE HAVE DIFFERENT THINGS
10:47:52 5 FOR DIFFERENT CUSTOMERS.

10:47:53 6 Q. OKAY. SO WHY DID YOU BELIEVE THAT SCENARIOS 1 AND 2 THAT
10:47:57 7 YOU HAD WORKED ON WAS BASED ON AN INCOMPLETE RECORD?

10:47:59 8 A. OKAY. SO BECAUSE WE DON'T HAVE RECORDS OF EVERY
10:48:04 9 INTERACTION WITH EVERY CUSTOMER AND BECAUSE THE CONVERSATIONS
10:48:08 10 ABOUT THE CLI AND EXPRESSIONS OF INTEREST IN THE CLI COULD
10:48:13 11 TYPICALLY HAPPEN -- WOULD TYPICALLY HAPPEN EARLY IN THE SELLING
10:48:16 12 PROCESS, BUT WOULD, YOU KNOW, WOULD OFTEN HAPPEN VERBALLY, THAT
10:48:22 13 WE ARE JUST NOT ALWAYS GOING TO SEE WHEN THOSE CONVERSATIONS
10:48:25 14 HAD TAKEN PLACE.

10:48:26 15 Q. LET'S FOCUS ON SCENARIO 3 THAT YOU DID PRESENT TO THE JURY
10:48:29 16 THAT LOOKS AT MARKET SHARE ANALYSIS.

10:48:36 17 DOES LOOKING BACK AT SCENARIO 3 THAT YOU PRESENTED TO THE
10:48:39 18 JURY, WHICH IS BASED ON A MARKET SHARE ANALYSIS, DOES SCENARIO
10:48:44 19 3 SUFFER FROM THIS INCOMPLETE RECORD PROBLEM THAT YOU HAD JUST
10:48:47 20 IDENTIFIED FOR THE OTHER TWO SCENARIOS?

10:48:50 21 A. NO, IT ACTUALLY DIDN'T BECAUSE SCENARIO 3 RELIES ON THE
10:48:56 22 OPINIONS OF A NUMBER OF ARISTA'S TOP EXECUTIVES IN THEIR
10:49:00 23 DEPOSITIONS, AND THEY ARE WELL-POSITIONED, ESPECIALLY LIKE
10:49:07 24 MR. SADANA AND MS. ULLAL WHO VANISH THERE FOR A LONG TIME, TO
10:49:12 25 LOOK OVER THE ENTIRE RECORD, THEY WOULD HAVE MEMORIES OF THOSE

10:49:14 1 CONVERSATIONS OR AT LEAST THE, YOU KNOW, SOME SUMMARY MEMORY OF
10:49:18 2 THOSE KIND OF CONVERSATIONS, SO QUESTIONS FOR THEM ABOUT, YOU
10:49:23 3 KNOW, HOW IMPORTANT WAS THE CLI TO CUSTOMERS, THEY WOULD
10:49:26 4 HAVE -- THEY WOULD BE BEST POSITIONED TO ACTUALLY BE ABLE TO
10:49:29 5 ANSWER THAT.

10:49:29 6 Q. AND WHAT'S THE ADVANTAGE OF LOOKING AT MARKET SHARE
10:49:31 7 INFORMATION THAT YOU USED IN SCENARIO 3 IN TERMS OF LOOKING AT
10:49:35 8 THE OVERALL INDUSTRY RATHER THAN SPECIFIC CUSTOMERS WHERE THERE
10:49:39 9 MAY BE SOME RECORD EVIDENCE OF THOSE CONVERSATIONS?

10:49:42 10 A. SO BY MARKET SHARE, DO YOU MEAN --

10:49:47 11 Q. THE CREHAN?

10:49:49 12 A. THE MARKET SHARE DATA. YES.

10:49:51 13 SO THEN ANOTHER -- I THINK ANOTHER CONSIDERATION IS AT ANY
10:49:57 14 MOMENT FOR ANY DEAL, YOU MAY NOT KNOW EXACTLY WHICH OTHER
10:50:01 15 PARTICIPANTS ARE GOING TO BE ACTUALLY AT ISSUE IN THAT
10:50:04 16 PARTICULAR ENGAGEMENT.

10:50:08 17 ESPECIALLY BECAUSE WE KNOW THAT WHEN YOU ARE TRYING TO
10:50:13 18 SOLICIT COMPETITIVE BIDS FOR SOMETHING, IT'S IMPORTANT WHEN YOU
10:50:17 19 ARE TRYING TO GET GOOD BIDS, TO TALK TO A LOT OF VENDORS.

10:50:21 20 AND SO THE MARKET SHARE TELLS US, SO THE RECORD IS
10:50:23 21 DIFFICULT ON THAT POINT, BUT THE MARKET SHARE TELLS US, AT THE
10:50:26 22 END OF THE DAY, WHAT FRACTION OF SALES DOES CISCO ACTUALLY WIN
10:50:30 23 OUT THERE IN THE REAL MARKETPLACE.

10:50:32 24 SO IT OVERCOMES THAT SORT OF FRAGMENTARY NATURE OF THE
10:50:37 25 EVIDENTIARY RECORD.

10:50:38 1 Q. NOW WITH THAT, DR. CHEVALIER, I WANT TO GO BACK TO
10:50:41 2 SPECIFIC DOCUMENTS THAT MR. SILBERT ASKED YOU ABOUT WITH
10:50:44 3 RESPECT TO MICROSOFT AND FACEBOOK.

10:50:47 4 A. OKAY.

10:50:48 5 Q. SO WHY DON'T WE LOOK AT THE FIRST DOCUMENT WHICH IS
10:50:53 6 EXHIBIT 5382.

10:51:02 7 SO THIS IS AN E-MAIL THAT WAS SENT, IF YOU FOCUS ON THE
10:51:05 8 BOTTOM OF THAT E-MAIL, IT WAS SENT BY MR. PLETCHER FROM CISCO
10:51:09 9 ON MARCH 26, 2013; DO YOU SEE THAT?

10:51:12 10 A. YES.

10:51:12 11 Q. AND HE ASKED YOU A FEW QUESTIONS ABOUT THAT. I BELIEVE HE
10:51:16 12 ASKED YOU ABOUT THE STATEMENT, FACEBOOK'S POSITION IS THAT
10:51:20 13 CISCO IS BEHIND THE CURVE; DO YOU RECALL THAT TESTIMONY?

10:51:22 14 A. YES.

10:51:22 15 Q. OKAY. BUT MR. SILBERT DIDN'T SHOW YOU THE OTHER
10:51:29 16 STATEMENTS IN THIS DOCUMENT THAT PERTAIN TO CLI SPECIFICALLY.

10:51:34 17 IF YOU GO TO THE MIDDLE OF THAT PARAGRAPH, COULD YOU
10:51:36 18 HIGHLIGHT THE STATEMENT THAT STARTS, "THIS WOULD CARRY IN
10:51:39 19 KEEPING THE API'S CURRENT, AND THAT AS ANY FEATURE IS ADDED,
10:51:48 20 THAT DAY ONE FOR ANY FEATURE REQUIRES API, CLI AND
10:51:52 21 INSTRUMENTATION, SNMP AND XML OR THE FEATURE MAY NOT BE
10:51:57 22 RELEASED."

10:51:58 23 DO YOU SEE THAT STATEMENT?

10:51:59 24 A. YES, I DO.

10:51:59 25 Q. LET'S LOOK AT ONE MORE STATEMENT THAT IS AT THE VERY

10:52:02 1 BEGINNING OF THIS E-MAIL THREAD.

10:52:06 2 SO THIS WHOLE E-MAIL THREAD BEGINS WITH AN E-MAIL THAT WAS
10:52:09 3 SENT ON MARCH 26, 2013, BY AN ACCOUNT MANAGER AT CISCO, AND HE
10:52:17 4 WRITES, "SUNIL MET WITH FB TODAY."

10:52:22 5 FB, IS FACEBOOK, "TO DISCUSS CHEF." I IMAGINE THAT'S A
10:52:25 6 PROJECT NAME.

10:52:27 7 "FB, FACEBOOK, MADE CLEAR TO SUNIL THAT WITH EVERY
10:52:30 8 FEATURE, CISCO NEEDS TO PROVIDE:

10:52:33 9 1. CLI.
10:52:35 10 2. 1 PK API.
10:52:38 11 3. INSTRUMENTATION SNMP XML IMPLEMENTATION."

10:52:45 12 DO YOU SEE THAT?

10:52:46 13 A. YES.

10:52:46 14 Q. DR. CHEVALIER, THIS IS 2013, CORRECT?

10:52:48 15 A. RIGHT.

10:52:48 16 Q. AND THAT'S WITHIN THE DAMAGES PERIOD THAT YOU LOOKED AT;
10:52:52 17 IS THAT RIGHT?

10:52:52 18 A. YES, DEFINITELY.

10:52:52 19 Q. SO WHAT ARE THESE STATEMENTS FROM FACEBOOK TO CISCO
10:52:57 20 SAYING, BEFORE YOU RELEASE ANY FEATURE, YOU HAVE TO HAVE A CLI
10:53:00 21 COMMAND ASSOCIATED WITH IT, WHAT DOES THAT TELL YOU ABOUT THE
10:53:03 22 IMPORTANCE OF CLI TO THE DECISION-MAKING PROCESS AT FACEBOOK IN
10:53:08 23 THIS CASE?

10:53:08 24 A. SO THEY ARE CERTAINLY USING THE CLI IN THEIR MANAGEMENT OF
10:53:12 25 THE SWITCHES, AND IT'S IMPORTANT.

10:53:14 1 Q. OKAY. AND IS THAT CONSISTENT WITH THE REST OF THE
10:53:17 2 EVIDENCE YOU HAVE SEEN AND HEARD ABOUT THE IMPORTANCE OF CLI TO
10:53:20 3 CUSTOMERS?

10:53:20 4 A. YES.

10:53:21 5 Q. OKAY. NOW LET'S LOOK AT ONE MORE DOCUMENT, THIS TIME
10:53:24 6 ABOUT MICROSOFT. AND THIS IS, I THINK A DOCUMENT THAT
10:53:30 7 MR. SILBERT ALSO ASKED YOU ABOUT, EXHIBIT 650. AND THIS WAS AN
10:53:42 8 E-MAIL SENT BY MR. BETTADAHALLI.

10:53:49 9 AND THIS WAS AN E-MAIL SENT ON JUNE 6, 2014?

10:53:52 10 A. YES.

10:53:52 11 Q. AND HE ASKED YOU A FEW QUESTIONS ABOUT THE CISCO FORMAT
10:53:55 12 LANGUAGE, AND YOU SAID, I BELIEVE THAT THIS IS NOT ONLY TALKING
10:53:58 13 ABOUT THE CLI, BUT THINGS IN ADDITION TO THE CLI AS WELL; DO
10:54:00 14 YOU RECALL THAT?

10:54:01 15 A. CORRECT, YES.

10:54:01 16 Q. BUT CLEARLY THERE ARE INSTANCES, ISN'T IT TRUE,
10:54:05 17 DR. CHEVALIER, THAT CLI IS MENTIONED IN THIS DOCUMENT, AND
10:54:09 18 LET'S TAKE A LOOK AT, FOR EXAMPLE, DHCP CLI?

10:54:16 19 A. YES, CORRECT. IT'S DEFINITELY MENTIONED.

10:54:18 20 Q. THEN LET'S LOOK AT A COUPLE OF MORE DESCRIPTIONS HERE, IT
10:54:22 21 SAYS, "WE HAVE TWO OPTIONS TO SUPPORT THE MICROSOFT
10:54:26 22 REQUIREMENT."

10:54:27 23 NOW I MAY HAVE MISSPOKEN, THIS IS NOT A CISCO DOCUMENT
10:54:31 24 THIS IS AN ARISTA DOCUMENT; IS THAT CORRECT?

10:54:32 25 A. YES, SORRY. YES.

10:54:34 1 Q. SO I APOLOGIZE TO THE JURY.

10:54:35 2 SO THIS IS AN ARISTA DOCUMENT SENT BY AN ARISTA EMPLOYEE
10:54:41 3 ON JUNE 6, 2014, AND HE'S TALKING ABOUT MICROSOFT SALES,
10:54:46 4 CORRECT?

10:54:46 5 A. CORRECT.

10:54:47 6 Q. AND SO AT THE BOTTOM THERE, WE HAVE TWO OPTIONS TO SUPPORT
10:54:52 7 MICROSOFT REQUIREMENT. ONE, ADD A NEW DHCP SNOOPING CLI; DO
10:54:58 8 YOU SEE THAT?

10:55:00 9 A. YES.

10:55:00 10 Q. AND THEN IT HAS IP -- PROPOSAL IS IP DHCP, SNOOPING
10:55:06 11 INFORMATION.

10:55:07 12 THAT'S A CLI COMMAND, CORRECT?

10:55:09 13 A. YES.

10:55:10 14 Q. AND DO YOU SEE WHAT IT SAYS THERE, THIS RESEMBLES CISCO
10:55:15 15 CLI?

10:55:15 16 A. CORRECT.

10:55:16 17 Q. OKAY. SO AGAIN, WHAT DOES THIS DOCUMENT TELL YOU ABOUT
10:55:19 18 THE IMPORTANCE OF CISCO CLI COMMANDS BEING USED BY ARISTA WITH
10:55:25 19 RESPECT TO ITS SALES FOR MICROSOFT?

10:55:28 20 A. SO AGAIN, MY -- THERE'S SOME TECHNICAL INFORMATION HERE I
10:55:33 21 COULDN'T TESTIFY TO, BUT THIS DOCUMENT, YOU KNOW, SUGGESTS TO
10:55:40 22 ME THAT EVEN AS OF 2013 DURING, THE DAMAGES PERIOD, MICROSOFT
10:55:46 23 IS INTERACTING WITH ARISTA ABOUT WANTING COMMANDS THAT ARE
10:55:50 24 SIMILAR TO THE CISCO CLI.

10:55:52 25 Q. AND ONE LAST DOCUMENT. THIS IS EXHIBIT 58 -- OR 6509.

10:56:07 1 AND AGAIN, MR. SILBERT ASKED YOU ABOUT THIS, IT WAS SENT
10:56:10 2 FROM MR. PREMJI AT ARISTA TO MR. SWEENEY.

10:56:13 3 AND AGAIN, THIS IS DEALING WITH MS SPREADSHEETS, THAT'S
10:56:18 4 MICROSOFT SPREADSHEETS, CORRECT?

10:56:20 5 A. CORRECT.

10:56:20 6 Q. AND AGAIN, THE DATE IS 2011; IS THAT RIGHT?

10:56:22 7 A. RIGHT.

10:56:22 8 Q. AND THAT'S WITHIN YOUR DAMAGES PERIOD?

10:56:24 9 A. CORRECT.

10:56:25 10 Q. OKAY. SO IF YOU LOOK AT THE NEXT TWO PAGES OVER, AND THIS
10:56:39 11 MAY BE IN THE NATIVE DOCUMENT. THERE WE GO. SO IF YOU GO TO
10:56:43 12 THE ROW THAT SAYS CLI, WHICH IS, IF YOU SCROLL DOWN, I BELIEVE
10:56:47 13 IT'S ON THE FIRST PAGE, IN THE MIDDLE OF THE FIRST PAGE.

10:56:51 14 DO YOU SEE THAT?

10:56:52 15 A. UH-HUH.

10:56:54 16 Q. SO ADMINISTRATION, CLI, SO YOU UNDERSTAND THAT WHAT'S ON
10:56:57 17 THE LEFT IS COMING FROM MICROSOFT AND THEN ARISTA IS RESPONDING
10:57:02 18 BY FILLING OUT THE SPREADSHEET?

10:57:04 19 A. EXACTLY, YES.

10:57:05 20 Q. SO MICROSOFT SAYS CLI, AND THE RANK IS 1,000 FOR
10:57:11 21 MICROSOFT?

10:57:11 22 A. RIGHT. AND MY RECOLLECTION IS THE 1,000 MEANT CRITICAL.

10:57:15 23 Q. THAT'S RIGHT. AND SO I THINK, I BELIEVE IT SAYS MANDATORY
10:57:20 24 MUST HAVE BEFORE ANY PILOT DEPLOYMENT; DO YOU SEE THAT?

10:57:25 25 A. RIGHT.

10:57:25 1 Q. SO IF YOU GO TO WHAT ARISTA ACTUALLY SAID IN RESPONSE TO
10:57:29 2 THAT MANDATORY REQUIREMENT, IF YOU SCROLL TO THE RIGHT, WHAT
10:57:35 3 DID ARISTA TELL MICROSOFT AS THE MANDATORY REQUIREMENT FOR IT'S
10:57:43 4 7508 PRODUCT?

10:57:43 5 A. THEY FILLED IN INDUSTRY STANDARD CLI.

10:57:45 6 AND AGAIN, MY UNDERSTANDING IS THOSE COLUMNS WERE ARISTA'S
10:57:48 7 ENTRIES.

10:57:48 8 Q. AND YOU HEARD TESTIMONY IN THIS CASE WHERE ARISTA USED THE
10:57:51 9 TERM "INDUSTRY STANDARD CLI" TO REFER TO THEIR USE OF CISCO
10:57:55 10 CLI, CORRECT?

10:57:56 11 A. YES.

10:57:57 12 MR. PAK: I DON'T HAVE ANY MORE QUESTIONS,
10:57:59 13 YOUR HONOR.

10:57:59 14 THE COURT: THANK YOU.

10:58:00 15 MR. SILBERT, MORE FOR THIS WITNESS?

10:58:06 16 **RECROSS-EXAMINATION**

10:58:06 17 BY MR. SILBERT:

10:58:15 18 Q. GOOD MORNING.

10:58:16 19 A. GOOD MORNING.

10:58:16 20 Q. YOU TALKED WITH MR. PAK ABOUT THE IDEA OF HAVING AN
10:58:19 21 INCOMPLETE RECORD; RIGHT?

10:58:20 22 A. YES.

10:58:20 23 Q. NOW YOU KNOW THAT CISCO BEARS THE BURDEN OF PROOF TO PROVE
10:58:26 24 ITS COPYRIGHT LOST PROFITS DAMAGES; RIGHT?

10:58:29 25 A. YES.

10:58:29 1 Q. YOU TALKED ABOUT THAT IN YOUR DIRECT TESTIMONY ON FRIDAY;
10:58:33 2 RIGHT?

10:58:33 3 A. RIGHT.

10:58:33 4 Q. AND YOU ALSO KNOW THAT CISCO HAD THE ABILITY, IF IT WANTED
10:58:38 5 TO, TO SUBPOENA FACEBOOK OR MICROSOFT OR ANY OTHER CUSTOMER AND
10:58:43 6 ASK THEM HOW MUCH DO YOU ACTUALLY CARE ABOUT THE CLI BEING
10:58:48 7 CISCO-LIKE OR NOT; RIGHT?

10:58:50 8 A. YES, THOUGH, AT ANY IN A MOMENT TIME, PARTICULAR
10:58:57 9 EXECUTIVES WHO ARE THERE MAY BE MORE OR LESS INFORMATIVE.

10:59:02 10 Q. OKAY. YOU UNDERSTAND CISCO HAD THE ABILITY TO COMPEL THAT
10:59:05 11 INFORMATION IF IT WANTED TO AND HAVE A WITNESS COME AND TESTIFY
10:59:08 12 AND ANSWER THOSE QUESTIONS AND EITHER SAY, WE WOULDN'T HAVE
10:59:12 13 BOUGHT THIS THING IF IT DIDN'T HAVE A CISCO-LIKE CLI, OR
10:59:16 14 ALTERNATIVELY, WE REALLY DON'T CARE WHETHER THE CLI LOOKS LIKE
10:59:20 15 CISCO'S OR NOT; RIGHT?

10:59:22 16 MR. PAK: OBJECTION. ARGUMENTATIVE.

10:59:23 17 THE COURT: OVERRULED.

10:59:24 18 THE WITNESS: YES, THEY COULD HAVE BROUGHT IN A
10:59:26 19 CURRENT, I BELIEVE A CURRENT FACEBOOK PERSON TO ANSWER
10:59:29 20 QUESTIONS OF THAT SORT, PERHAPS RETROSPECTIVELY.

10:59:32 21 MR. SILBERT: OKAY.

10:59:33 22 Q. NOW YOU CALLED THE EVIDENCE THAT YOU RELIED ON FOR
10:59:39 23 SCENARIOS 1 AND 2 AN INCOMPLETE RECORD; RIGHT?

10:59:42 24 A. INCOMPLETE IN THE SENSE THAT WE DON'T HAVE ALL THE
10:59:46 25 DOCUMENTS AND CONVERSATIONS FROM THE PAST, YES.

10:59:50 1 Q. OKAY. SO SCENARIO 3, WHICH IS WHERE YOUR CONTENTION IS
10:59:54 2 ARISTA WOULD HAVE BEEN UNABLE TO MAKE 80 PERCENT OF ALL OF ITS
10:59:59 3 SALES IF IT DIDN'T COPY, ILLEGALLY COPY CISCO'S CLI, THAT
11:00:05 4 CONTENTION, YOU ARE BASING ON OPINIONS OF TOP EXECUTIVES AT
11:00:12 5 ARISTA, IS THE WAY YOU PUT IT; RIGHT?

11:00:14 6 A. IN PART, BUT YES, LARGELY THE TESTIMONY OF TOP EXECUTIVES
11:00:20 7 AT ARISTA.

11:00:20 8 Q. OKAY. AND OBVIOUSLY YOU PUT A LOT OF STOCK IN THOSE
11:00:24 9 ARISTA EXECUTIVES'S OPINIONS; RIGHT?

11:00:27 10 A. WELL, THEY WERE IN DEPOSITIONS UNDER OATH, YES.

11:00:31 11 Q. OKAY. AND IF THOSE EXECUTIVES EXPLAIN UNDER OATH THAT
11:00:38 12 WHAT YOU'RE INTERPRETING THEIR STATEMENTS TO MEAN IS NOT WHAT
11:00:41 13 THEY ACTUALLY MEANT, OBVIOUSLY THAT'S SOMETHING THAT YOU WOULD
11:00:45 14 PLACE A LOT OF IMPORTANCE ON; RIGHT?

11:00:48 15 A. YES, IF THEY EXPLAINED CLEARLY THAT THEY WERE
11:00:54 16 MISINTERPRETED, SURE.

11:00:55 17 Q. OKAY. YOU UNDERSTAND THAT THERE'S A DIFFERENCE BETWEEN
11:01:00 18 HAVING A CLI AND HAVING A CLI THAT INFRINGES CISCO'S
11:01:08 19 COPYRIGHTS; RIGHT?

11:01:08 20 A. YES, I DO UNDERSTAND THAT.

11:01:09 21 Q. YOU UNDERSTAND THAT EVERY, PRETTY MUCH EVERY SINGLE
11:01:12 22 NETWORK SWITCH VENDOR HAS A CLI; RIGHT?

11:01:14 23 A. YES, I UNDERSTAND THAT.

11:01:15 24 Q. OKAY. AND SO WHEN YOU SEE STATEMENTS THAT PLACE A VALUE
11:01:21 25 ON A CLI, YOU UNDERSTAND OR WE WANT A CLI COMMAND, YOU

11:01:29 1 UNDERSTAND THAT THAT'S NOT THE SAME THING AS SAYING, WE WANT
11:01:32 2 YOU TO HAVE THE SAME COMMAND THAT CISCO HAS BECAUSE WE REFUSE
11:01:36 3 TO LEARN ANYTHING ELSE; RIGHT?

11:01:39 4 A. YES, I UNDERSTAND THAT THAT IS TRUE.

11:01:45 5 MR. SILBERT: OKAY. I HAVE NOTHING FURTHER.

11:01:46 6 THE COURT: MR. PAK, ANYTHING FOR DR. CHEVALIER?

11:01:50 7 **FURTHER REDIRECT EXAMINATION**

11:01:51 8 BY MR. PAK:

11:01:59 9 Q. AGAIN, JUST TO BE CLEAR, DR. CHEVALIER, YOU LOOKED AT ALL
11:02:03 10 THE EVIDENCE THAT'S BEEN PRODUCED IN THIS CASE, NOT JUST THE
11:02:06 11 SNIPPETS OF TESTIMONY AND EXHIBITS THAT WERE SHOWN TO YOU BY
11:02:08 12 COUNSEL; IS THAT CORRECT?

11:02:09 13 A. OH, YES, OF COURSE.

11:02:10 14 Q. AND WITH RESPECT TO LOST PROFITS, WE TALKED ABOUT JUST TO
11:02:15 15 MAKE SURE WE UNDERSTAND FOR THE JURORS, YOU ARE COMING BACK TO
11:02:18 16 TALK ABOUT DISGORGEMENT ISSUES, SO TODAY'S TESTIMONY WAS ABOUT
11:02:23 17 LOST PROFITS AND THE PATENT DAMAGES; IS THAT CORRECT?

11:02:24 18 A. YES, CORRECT.

11:02:26 19 Q. OKAY.

11:02:26 20 MR. PAK: THAT'S IT, YOUR HONOR.

11:02:27 21 THE COURT: THANK YOU. IS THAT EVERYTHING?

11:02:31 22 DR. CHEVALIER, THANK YOU FOR YOUR TESTIMONY. YOU ARE FREE
11:02:33 23 TO GO.

11:02:38 24 MR. NELSON, YOUR NEXT WITNESS?

11:02:42 25 MR. NELSON: WE ARE GOING TO PLAY SOME DEPOSITION

11:02:44 1 TESTIMONY FIRST, YOUR HONOR, BEFORE OUR NEXT LIVE WITNESS.

11:02:47 2 THE COURT: OKAY.

11:02:48 3 MR. PAK: YOUR HONOR, THIS IS THE DEPOSITION
11:02:50 4 TESTIMONY, WE HAVE A SHORT CLIP FROM MR. ANSHUL SADANA WHO IS
11:02:55 5 ARISTA'S CHIEF CUSTOMER OFFICER. HE TESTIFIED LIVE, BUT WE
11:02:59 6 ALSO HAVE SOME DEPOSITION TESTIMONY TO PLAY FOR THE JURORS AS
11:03:03 7 WELL.

11:03:19 8 **(THE VIDEO DEPOSITION OF ANSHUL SADANA WAS PLAYED INTO THE**
11:07:44 9 **RECORD.)**

11:07:44 10 MR. PAK: THANK YOU, YOUR HONOR. THAT ENDS THE
11:07:45 11 TESTIMONY OF MR. SADANA.

11:07:47 12 AND I THINK WE HAVE MR. CHAMBERS WHO WILL BE OUR NEXT
11:07:52 13 WITNESS.

11:07:53 14 MR. NELSON: YES, YOUR HONOR.

11:07:55 15 WE WILL CALL JOHN CHAMBERS TO THE STAND. AND HANDLING THE
11:07:59 16 EXAMINATION IS GOING TO BE A NEW FACE, MR. JOHN DESMARAIS.

11:08:12 17 THE COURT: AND MR. CHAMBERS IS HERE.

11:08:15 18 MR. CHAMBERS, IF YOU WOULD COME FORWARD TO THE WITNESS
11:08:17 19 STAND, PLEASE, AND STAND TO BE SWORN.

11:08:21 20 THE WITNESS: THANK YOU, YOUR HONOR. GOOD MORNING.

11:08:23 21 **(PLAINTIFF'S WITNESS, JOHN CHAMBERS, WAS SWORN.)**

11:08:37 22 THE WITNESS: YES, I DO.

11:08:44 23 THANK YOU VERY MUCH.

11:08:44 24 THE CLERK: IF YOU WOULD STATE YOUR NAME FOR THE
11:08:47 25 RECORD AND SPELL YOUR LAST NAME.

11:08:48 1 THE WITNESS: JOHN CHAMBERS. C-H-A-M-B-E-R-S.

11:08:53 2 THE COURT: GOOD MORNING, MR. DESMARAIS, WELCOME.

11:08:56 3 MR. DESMARAIS: GOOD MORNING, YOUR HONOR.

11:08:57 4 JOHN DESMARAIS FOR CISCO.

11:08:57 5 **DIRECT EXAMINATION**

11:08:57 6 BY MR. DESMARAIS

11:09:00 7 Q. GOOD MORNING, MR. CHAMBERS.

11:09:01 8 A. GOOD MORNING. GOOD MORNING TO ALL OF YOU.

11:09:02 9 Q. WOULD YOU PLEASE EXPLAIN TO THE JURY WHAT YOUR CURRENT
11:09:06 10 POSITION IS AT CISCO?

11:09:07 11 A. YES. I'M AN EXECUTIVE VICE CHAIRMAN, WHICH MEANS A
11:09:10 12 WORKING CHAIRMAN AT CISCO, AND I HAVE BEEN IN THAT ROLE FOR
11:09:16 13 15 MONTHS.

11:09:16 14 Q. IS IT THAT THE SENIOR MOST POSITION AT CISCO?

11:09:18 15 A. NO, IT IS NOT. THE CEO IS THE SENIOR MOST POSITION.

11:09:22 16 Q. AND WERE YOU CEO WHEN THIS CASE WAS FILED, SIR?

11:09:27 17 A. YES, I WAS. I WAS CEO FOR 20 YEARS.

11:09:29 18 Q. SO DID YOU AUTHORIZE THE FILING OF THIS LAWSUIT AGAINST
11:09:31 19 ARISTA?

11:09:31 20 A. YES, I DID.

11:09:32 21 Q. SO I WOULD LIKE TO TALK A LITTLE BIT ABOUT WHY THE CASE
11:09:35 22 WAS FILED. BUT BEFORE WE DO THAT, LET'S TELL THE JURY A LITTLE
11:09:40 23 BIT ABOUT YOUR BACKGROUND, A LITTLE BIT ABOUT CISCO, AND A
11:09:40 24 LITTLE BIT ABOUT ARISTA.

11:09:43 25 WHERE WERE YOU BORN AND RAISED, MR. CHAMBERS?

11:09:44 1 A. I WAS BORN IN CLEVELAND, OHIO. MY PARENTS WENT TO MEDICAL
11:09:49 2 SCHOOL THERE. I MOVED TO WEST VIRGINIA TO STAY WITH MY
11:09:49 3 GRANDPARENTS AS THEY ATTENDED MEDICAL SCHOOL.

11:10:03 4 RAISED IN WEST VIRGINIA. AND I GREW UP THROUGH HIGH
11:10:04 5 SCHOOL IN WEST VIRGINIA, SO I WAS THERE MOST OF MY YOUNG LIFE.

11:10:09 6 Q. ARE YOU MARRIED?

11:10:10 7 A. YES, I AM. I'M MARRIED TO MY HIGH SCHOOL SWEETHEART.

11:10:14 8 Q. HOW LONG HAVE YOU BEEN MARRIED?

11:10:15 9 A. I HAVE BEEN MARRIED, OH MY GOSH, I BETTER NOT MESS THIS
11:10:21 10 ONE UP, 43 YEARS, ABOUT TO BE 44.

11:10:23 11 Q. AND DO YOU HAVE CHILDREN?

11:10:24 12 A. YES, I HAVE TWO GREAT KIDS.

11:10:26 13 Q. TELL US BRIEFLY ABOUT YOUR KIDS.

11:10:28 14 A. MY DAUGHTER IS A DESIGNER AND A HOME BUILDER OUT OF
11:10:34 15 LOS ANGELES. MY SON IS IN THE HIGH TECH INDUSTRY. AND I HAVE
11:10:38 16 TWO GREAT GRANDKIDS, AN EIGHT YEAR OLD AND A THREE-AND-A-HALF
11:10:41 17 YEAR OLD.

11:10:41 18 Q. WHERE YOU DID YOU GO TO COLLEGE, MR. CHAMBERS?

11:10:44 19 A. I WENT TO COLLEGE FOR A LONG TIME, NINE AND A HALF YEARS.
11:10:48 20 I WENT TO DUKE WEST VIRGINIA AND INDIANA.

11:10:50 21 Q. AND WHAT DEGREES DID YOU GET FROM COLLEGE?

11:10:53 22 A. I GOT A BUSINESS DEGREE, A LAW DEGREE, AND THEN BA DEGREE.

11:10:56 23 Q. AND AFTER YOU ACHIEVED THESE DEGREES, WHEN DID YOU BEGIN
11:11:01 24 YOUR CAREER AND WHERE WAS THAT?

11:11:03 25 A. AGAIN, I BEGAN MY CAREER IN 1976 IN INDIANAPOLIS WITH IBM.

11:11:09 1 Q. AND ABOUT HOW LONG WERE YOU WITH IBM?

11:11:13 2 A. ABOUT -- A LITTLE BIT OVER SIX YEARS.

11:11:16 3 Q. AND JUST VERY BRIEFLY, WHAT KIND OF THINGS DID YOU DO FOR
11:11:20 4 IBM AT THAT TIME?

11:11:21 5 A. I STARTED IN SALES, THEN MOVED TO A REGIONAL JOB, KIND OF
11:11:24 6 A COMPETITIVE EXPERT, IF YOU WILL, AND THEN A FIRST-LINE
11:11:26 7 MANAGEMENT JOB IN PITTSBURGH.

11:11:28 8 Q. AND WHERE DID YOU HEAD AFTER IBM?

11:11:31 9 A. I WENT TO WANG LABORATORIES.

11:11:33 10 Q. AND WHERE WAS YOUR JOB LOCATED WHEN YOU WERE AT WANG
11:11:37 11 LABORATORIES?

11:11:37 12 A. I WAS IN ATLANTA, THEN GREENSBOROUGH, THEN CHICAGO, THEN
11:11:43 13 BOSTON.

11:11:43 14 Q. AND ABOUT HOW LONG DID YOU STAY WITH WANG LABORATORIES?

11:11:47 15 A. ABOUT EIGHT YEARS.

11:11:47 16 Q. AND AGAIN, JUST VERY BRIEFLY, WHAT KINDS OF THINGS DID YOU
11:11:51 17 DO FOR WANG?

11:11:52 18 A. I STARTED OFF IN SALES MANAGEMENT. THEN MANAGED TO REGION
11:11:56 19 OF THE U.S. OPERATIONS, THEN MANAGED ASIA PACIFIC OPERATIONS
11:11:59 20 FOR WANG, AND THEN RAN THE U.S. OPERATIONS. SO ABOUT 10,000
11:12:03 21 PEOPLE IN MY LAST JOB.

11:12:05 22 Q. AND WHAT DID YOU DO AFTER YOU LEFT WANG LABS?

11:12:08 23 A. CAME TO CISCO, HERE IN SILICON VALLEY.

11:12:11 24 Q. WHEN WAS THAT?

11:12:11 25 A. JANUARY 1991.

11:12:14 1

Q. AND WHAT WAS YOUR FIRST POSITION AT CISCO?

11:12:16 2

A. FIRST POSITION WAS HEAD OF WORLDWIDE OPERATIONS WHICH IS

11:12:20 3

BASICALLY SALES, AND THEN THEY ADDED OVER TIME, SERVICE,

11:12:23 4

MARKETING, ET CETERA, TO IT.

11:12:25 5

Q. YOU SAID THAT WAS IN SILICON VALLEY, WAS IT IN SAN JOSE?

11:12:28 6

A. YES. WELL, AT THAT TIME WE WERE UP NORTH, WE MOVED TO

11:12:33 7

SAN JOSE ABOUT TEN YEARS AGO.

11:12:35 8

Q. AND ARE YOU STILL IN SAN JOSE TODAY?

11:12:37 9

A. YES, WE ARE.

11:12:38 10

Q. AND HOW MANY EMPLOYEES DOES CISCO HAVE IN SAN JOSE IN THE

11:12:43 11

VALLEY AREA?

11:12:44 12

A. WE HAVE ABOUT 15,000 EMPLOYEES IN THE VALLEY AREA.

11:12:46 13

Q. AND DO YOU AND YOUR FAMILY LIVE IN THE VALLEY?

11:12:48 14

A. OH, YES, WE LOVE IT HERE. HOPEFULLY I'M NOT GOING TO HAVE

11:12:53 15

TO MOVE AGAIN. YOU MIGHT HAVE TO TRADE ME IN, IF I DO.

11:12:56 16

Q. TELL US VERY BRIEFLY, IF YOU WILL, HOW YOU WENT FROM THAT

11:12:59 17

VERY FIRST POSITION IN 1991 TO WHERE YOU ARE TODAY AS EXECUTIVE

11:13:03 18

CHAIRMAN?

11:13:03 19

A. SURE. I STARTED OFF IN THE WORLDWIDE SALES OPERATIONS.

11:13:07 20

WE HAD ABOUT 500 PEOPLE AT THAT TIME. ABOUT 70 MILLION IN

11:13:11 21

SALES.

11:13:12 22

AND THEN OVER TIME, I PICKED UP MORE RESPONSIBILITIES,

11:13:15 23

U.S. SALES OPERATIONS, PICKED UP SERVICES, MARKETING. AND THEN

11:13:20 24

OVER A PERIOD OF ABOUT FOUR YEARS, EVERYTHING WAS ADDED TO ME,

11:13:25 25

THEN I BECAME CEO, AT THAT TIME EVERYTHING WAS ALREADY

11:13:28 1

REPORTING TO ME.

11:13:29 2

Q. AND THEN AFTER YOU BECAME CEO, DID THERE COME A TIME WHERE

11:13:32 3

YOU ALSO ADDED THE ROLE OF CHAIRMAN OF THE BOARD?

11:13:35 4

A. YES. I THINK THAT WAS ABOUT TEN YEARS LATER.

11:13:38 5

Q. AND THEN YOU SAID TODAY YOU ARE EXECUTIVE CHAIRMAN, WHEN

11:13:41 6

DID YOU TRANSITION FROM CHAIRMAN OF THE BOARD AND CEO, TO YOUR

11:13:45 7

CURRENT ROLE AS EXECUTIVE CHAIRMAN?

11:13:47 8

A. LAST SUMMER, ABOUT 15, 16 MONTHS AGO.

11:13:50 9

Q. AND WHAT WAS THE REASON FOR THAT CHANGE?

11:13:51 10

A. IT WAS MY DECISION THAT IT WAS TIME FOR ME MOVE ON. AND

11:13:55 11

CISCO IS MY FAMILY, IT'S SO IMPORTANT TO ME THAT THIS WAS A

11:14:00 12

VERY SMOOTH TRANSITION. OFTEN IN THE VALLEY, WE DON'T DO THAT

11:14:02 13

VERY WELL AT HIGH-TECH FIRMS.

11:14:04 14

AND SO I THOUGHT ABOUT FOR TEN YEARS ON HOW TO MAKE THIS

11:14:07 15

TRANSITION, AND WE WORKED WITH THE BOARD FOR A YEAR, AND THEN

11:14:10 16

ANNOUNCED THE TRANSITION.

11:14:11 17

AND THEN I WOULD BE THE ADVISOR TO THE NEW CEO,

11:14:16 18

CHUCK ROBBINS, WHO IS A REALLY GOOD GUY, FOR THE NEXT COUPLE

11:14:20 19

YEARS.

11:14:20 20

Q. NOW LET'S TURN AND TALK A LITTLE BIT ABOUT CISCO THE

11:14:23 21

COMPANY NOW THAT WE'VE GOT A LITTLE BIT ABOUT YOUR BACKGROUND.

11:14:26 22

TELL US, IF YOU WOULD, A LITTLE BIT ABOUT THE CULTURE OF

11:14:29 23

INNOVATION AT CISCO?

11:14:30 24

A. IT'S DEEPLY IMBEDDED. AS I ALLUDED TO EARLIER WITH IBM

11:14:35 25

AND THEN WANG LABORATORIES, WANG WAS A GREAT COMPANY. AND

11:14:39 1 DR. WANG IS A GREAT INNOVATOR, BUT WE MISSED A COUPLE OF WHAT
11:14:43 2 WE CALL "MARKET TRANSITIONS" MOVING FROM MANY COMPUTERS TO
11:14:46 3 PC'S, IF YOU WILL, AND SOFTWARE. AND THEN AT IBM WE MISSED THE
11:14:49 4 TRANSITION FROM MAINFRAMES TO MINICOMPUTERS TO PC'S.

11:14:53 5 AND SO IN EACH OF THOSE ROLES, I LEARNED A LOT ABOUT
11:14:56 6 YOU'VE GOT TO INNOVATE CONSTANTLY OR YOU GET BEHIND. PEOPLE
11:15:02 7 MIGHT ASK WHAT I'M MOST PROUD OF AT CISCO, IT'S OUR INNOVATION,
11:15:07 8 IT'S OUR PEOPLE AND OUR CULTURE.

11:15:08 9 WE'RE NOT A PERFECT COMPANY, I'M NOT A PERFECT LEADER, BUT
11:15:10 10 IT'S A COMPANY I'M VERY PROUD OF.

11:15:12 11 Q. LET ME SHOW YOU SOME EXHIBITS, MR. CHAMBERS.

11:15:15 12 YOUR HONOR, MAY I APPROACH?

11:15:16 13 THE COURT: YES.

11:15:20 14 THE WITNESS: THANK YOU.

11:15:26 15 Q. MR. CHAMBERS, I'VE HANDED YOU A BINDER WITH THREE SLIDES,
11:15:31 16 CHAMBER'S SLIDES 1, 2, AND 3; DO YOU SEE THOSE?

11:15:33 17 A. YES, I DO.

11:15:34 18 Q. WOULD THOSE AID YOUR TESTIMONY TO THE JURY TODAY?

11:15:36 19 A. YES, THEY WILL.

11:15:37 20 Q. LET'S PUT UP THE FIRST SLIDE. CHAMBERS NUMBER 1.

11:15:43 21 WHAT DO WE SEE IN THIS SLIDE, MR. CHAMBERS?

11:15:45 22 A. THIS IS ABOUT INNOVATION, BACK TO THE QUESTION THAT YOU
11:15:48 23 ASKED ME EARLIER, MR. DESMARAIS, IT IS WHAT I'M MOST PROUD OF.
11:15:52 24 IT TALKS ABOUT THE MOST INNOVATE COMPANIES, THE FIRST SECTION.

11:15:59 25 Q. LET'S STOP THERE FOR A MINUTE.

11:16:01 1 THE FIRST ENTRY SAYS "MOST INNOVATIVE COMPANIES" AND THEN
11:16:05 2 IT HAS A SERIES OF YEARS UNDERNEATH IT; WHAT IS THAT REFERRING
11:16:07 3 TO, EXACTLY?

11:16:08 4 A. WELL, THAT MEANS THAT WE MADE THE VERY TOP LIST, OF THE
11:16:08 5 MOST INNOVATIVE COMPANIES IN THE WORLD.

11:16:17 6 IT MEANS THAT WE MADE THE LIST OF THE MOST INNOVATIVE
11:16:22 7 COMPANIES IN THE WORLD A NUMBER OF YEARS IN A ROW, WHICH IS
11:16:24 8 HARD TO DO.

11:16:25 9 AND IT TAKES -- I TAKE GREAT DEAL OF PRIDE IN IT BECAUSE
11:16:28 10 IT MEANS WE ARE CONSTANTLY REINVENTING OURSELVES. AND WHEN YOU
11:16:31 11 GET RECOGNIZED YEAR, AFTER YEAR, AFTER YEAR, AND IT LOOKS LIKE
11:16:35 12 WE MIGHT HAVE MISSED TWO OUT OF FIVE OUT OF 2015, IT MEANS YOU
11:16:39 13 DO THAT CONSTANTLY, REINVENT YOURSELF, WHICH IS WHAT YOUR
11:16:42 14 FUTURE IS ABOUT. IF YOU DON'T, YOU GET LEFT BEHIND,
11:16:44 15 UNFORTUNATELY.

11:16:45 16 Q. NOW THE NEXT ENTRY SAYS "BEST OF INTEROP." WHAT IS
11:16:48 17 INTEROP?

11:16:48 18 A. THINK OF INTEROP AS A TECHI-TYPE CONVENTION WHERE YOU GO
11:16:54 19 TO, AND A LOT OF THE TECHNICIANS ATTEND. AND WHEN THEY GO
11:16:58 20 THERE, THEY TALK ABOUT WHAT'S GOING ON IN THE INDUSTRY, AND
11:17:00 21 THEN THEY HAVE RECOGNITION FOR WHAT THE TOP AWARDS ARE AT
11:17:04 22 INTEROP. AND THIS REFERS TO THE WINNER OF MULTIPLE AWARDS AT
11:17:10 23 INTEROP OVER THE LAST THREE YEARS.

11:17:13 24 Q. AND THE LAST ENTRY ON THIS SLIDE TALKS ABOUT THE 2016
11:17:16 25 EDISON ACHIEVEMENT AWARD, AWARDED TO YOU FOR SIGNIFICANT AND

11:17:21 1 LASTING CONTRIBUTION TO THE WORLD OF INNOVATION; WHAT IS THAT
11:17:25 2 ABOUT?

11:17:25 3 A. WELL, IT'S KIND OF EXCITING. I THINK IT TIES TO THE BEST
11:17:28 4 OF INTEROP CONCEPT. WE WON FOUR AWARDS IN 2016 IN FOUR OUT OF
11:17:33 5 TEN CATEGORIES. AND WE WERE ALL PROUD OURSELVES, AND ANY
11:17:38 6 HIGH-TECH COMPANY THAT'S DONE THAT.

11:17:40 7 AND AT THE SAME TIME, THE EDISON AWARD, WAS AN HONORARY
11:17:45 8 FOR THE WHOLE COMPANY. THEY GIVE IT TO THE CEO. IT'S ONE THAT
11:17:52 9 STEVE JOBS WON ONE YEAR. ELON MUSK OUT OF TESLA WON IT ANOTHER
11:17:54 10 YEAR. AND IT'S FOR THE CONTINUING INNOVATION OVER THE HISTORY
11:17:59 11 AND YOUR CONTRIBUTION ON A GLOBAL BASIS.

11:18:04 12 SO IT'S YOUR ABILITY TO HELP YOUR COMPANY INNOVATE AND TO
11:18:19 13 RE-INNOVATE. AND SO IT'S A TREMENDOUS HONOR FOR ME, BUT REALLY
11:18:22 14 IT'S AN HONOR THAT THE COMPANIES DESERVES. I THINK ALL OF
11:18:24 15 THESE SPEAK TO OUR INNOVATION CAPABILITY, AND IT'S SOMETHING
11:18:28 16 THAT I'M VERY PROUD OF. I THINK IT'S UNIQUE IN THE VALLEY.

11:18:30 17 Q. SO IT SEEMS CISCO HAS BEEN PRETTY SUCCESSFUL IN
11:18:33 18 INNOVATING. HAVE ALL OF YOUR EFFORTS TO INNOVATE BEEN
11:18:37 19 SUCCESSFUL, SIR?

11:18:38 20 A. NO. I THINK ONE OF THE IMPORTANT THINGS THAT IN BUSINESS
11:18:41 21 OR IN OUR PERSONAL LIVES OR OUR FAMILY IS TO REALIZE THAT YOU
11:18:45 22 WILL HAVE A SET OF FACTS THAT IF YOU ARE NOT TAKING GOOD RISK,
11:18:49 23 YOU CAN -- YOU WOULD NOT STAY AHEAD.

11:18:53 24 WHEN YOU TAKE GOOD BUSINESS RISK, THERE WILL BE SETBACKS.
11:19:10 25 I THINK YOU ARE MORE A PRODUCT -- MORE PRODUCT OF YOUR

11:19:14 1 SETBACKS. I APOLOGIZE, WE WIFE, SHE'S A SPEAK THERAPIST, AND
11:19:22 2 SHE CAN'T EVEN FIX MY ACCENT. YOU ARE MORE A PRODUCT OF OUR
11:19:23 3 SETBACKS THAN WE ARE OF OUR SUCCESSES.

11:19:25 4 AND MANY PEOPLE DON'T THINK ABOUT THAT BECAUSE THEY ALWAYS
11:19:28 5 WRITE ABOUT YOUR SUCCESSES, AND WE'VE DONE A LOT OF THOSE. BUT
11:19:31 6 WHAT GREAT COMPANIES DO IS THEY HANDLE THEIR SETBACKS WELL, AND
11:19:34 7 THEY ARE WILLING TO TAKE THE RISK.

11:19:36 8 SAME THING WITH OUR KIDS, IN MANY WAYS, DEVELOPING A
11:19:40 9 COMPANY IS LIKE DEVELOPING A FAMILY. IT'S HOW YOUR KIDS HANDLE
11:19:44 10 THEIR SETBACKS IN LIFE, THEY ARE ALMOST MORE IMPORTANT THAN HOW
11:19:47 11 THEY HANDLE THEIR SUCCESSES.

11:19:48 12 SO WE HAD 193 ACQUISITIONS, 180 UNDER MY TIME PERIOD.
11:19:53 13 ABOUT TWO-THIRDS OF THEM WORKED AND ABOUT A THIRD OF THEM
11:19:56 14 DIDN'T.

11:20:00 15 Q. SO INNOVATION SOUNDS LIKE IT TAKES A LOT OF EFFORT AND A
11:20:04 16 LOT OF EXPENSE.

11:20:07 17 WHAT IS CISCO'S ANNUAL RESEARCH AND DEVELOPMENT BUDGET FOR
11:20:09 18 THESE INNOVATIONS?

11:20:10 19 A. SURE. IT'S ABOUT \$6 BILLION A YEAR. PROBABLY ABOUT
11:20:14 20 28,000 ENGINEERS, AND THAT DOESN'T COUNT ACQUISITIONS, WHICH IS
11:20:18 21 ANOTHER WAY THAT YOU CONTINUE MOVING THROUGH MARKET AREAS.

11:20:23 22 Q. AND NOW WHEN YOU JOINED CISCO BACK IN 1991, WHAT WAS
11:20:26 23 CISCO'S PRIMARY BUSINESS AT THAT TIME?

11:20:27 24 A. IN 1991, WE HAD JUST COME OFF ABOUT 70 MILLION IN SALES,
11:20:33 25 WE HAD A LITTLE BIT UNDER 500 PEOPLE. WE MADE ROUTERS.

11:20:37 1 Q. WHAT'S A ROUTER?

11:20:38 2 A. A ROUTER, THINK OF IT AS A TRAFFIC SIGNAL ON THE INTERNET,
11:20:42 3 AND IT DIRECTS WHERE THE DATA -- AND IN TODAY'S WORLD, VOICE
11:20:46 4 AND VIDEO IS SUPPOSED TO GO.

11:20:49 5 AND SO IT BRINGS INTELLIGENCE TO THE NETWORK. PROBABLY
11:20:53 6 90 PERCENT OF THE INTERNET TRAFFIC TRAVELS OVER CISCO
11:20:57 7 TECHNOLOGY, BUT WE WERE A SINGLE-PRODUCT COMPANY.

11:20:59 8 Q. SO WHEN WE WRITE AN E-MAIL OR USE SOCIAL MEDIA, THAT'S
11:21:04 9 GOING OVER CISCO ROUTERS?

11:21:05 10 A. UH-HUH. OR WATCH A VIDEO OR OTHER THINGS.

11:21:07 11 Q. AND DURING YOUR LEADERSHIP AT CISCO FROM 1991 UNTIL TODAY,
11:21:12 12 DID YOU EXPAND THE COMPANY WELL BEYOND JUST ROUTERS?

11:21:15 13 A. YES, WE MOVED INTO 18 PRODUCT AREAS. I'VE LEARNED FROM
11:21:22 14 BOTH SUCCESSES, AT BOTH IBM AND WANG, BUT ALSO WATCHING OTHERS
11:21:27 15 THAT IF YOU DON'T MOVE INTO ADDITIONAL AREAS AND YOU ARE ONLY A
11:21:31 16 ONE-PRODUCT COMPANY, YOU PROBABLY WON'T SURVIVE VERY LONG. YOU
11:21:34 17 WON'T BE ABLE TO GROW AS WELL.

11:21:36 18 SO I'M VERY PROUD OF HOW WE MOVED INTO ONE NEW CATEGORY
11:21:40 19 AFTER ANOTHER. AND IN MOST CASES WE HAVE BECOME THE NUMBER ONE
11:21:45 20 PLAYER IN ALMOST ALL BUT A FEW.

11:21:46 21 Q. LET'S TAKE A LOOK AT SOME OF THOSE. CAN WE SEE THE NEXT
11:21:49 22 SLIDE, CHAMBERS 2.

11:21:50 23 ON THIS SLIDE WE SEE INTERNET CLOUD IN THE MIDDLE AND
11:21:54 24 SEVERAL PRODUCT CATEGORIES. AND LET ME JUST BRIEFLY ASK YOU,
11:21:57 25 ABOUT IN THE TOP LEFT WE SEE VOIP, OR VOICE ON THE INTERNET.

11:22:02 1 AND THEN AS WE MOVE AROUND CLOCKWISE, WE SEE SECURITY ON THE
11:22:06 2 INTERNET, WE SEE TELEPRESENCE VIDEO CONFERENCES, WE SEE CLOUD
11:22:10 3 COMPUTING, WE SEE WI-FI, AND WE SEE SWITCHING.

11:22:14 4 ARE THOSE SOME OF THE AREAS THAT YOU BROUGHT THE COMPANY
11:22:17 5 INTO DURING YOUR LEADERSHIP FROM 1991 UNTIL TODAY?

11:22:20 6 A. YES, IT IS. AND IF IT'S ALL RIGHT FOR ME TO COMMENT ON
11:22:24 7 EACH ONE OF THEM BRIEFLY.

11:22:26 8 Q. YES, JUST BRIEFLY, BECAUSE IT'S BACKGROUND.

11:22:29 9 A. OKAY. SO WHAT WE DO IS WE FOCUS ON TRANSITIONS OCCURRING
11:22:34 10 IN THE MARKET. WE DON'T FOCUS ON A COMPETITOR. IF YOU ARE A
11:22:36 11 COMPETITOR, YOU ARE LOOKING OUT YOUR REAR VIEW MIRROR.

11:22:39 12 SO WE FOCUS AS CHANGES OCCUR IN THE INDUSTRY. SO WHEN
11:22:42 13 VOICE, WHICH USED TO BE DONE OVER TELEPHONE LINES, MOVED TO
11:22:46 14 INTERNET, WE FOCUSED ON THAT AND IT BECAME A BILLION DOLLAR
11:22:49 15 MARKET FOR US. TODAY WE ARE THE NUMBER ONE PLAYER.

11:22:53 16 SAME THING WITH SECURITY. 2004, WE BECAME THE NUMBER ONE
11:22:58 17 PLAYER IN SECURITY. IT'S ABOUT \$2.4 BILLION FOR US TODAY.

11:23:08 18 TELEPRESENCE, IT'S LIKE YOU ARE IN THE SAME ROOM, NOT
11:23:11 19 VIDEO CONFERENCE-WISE, BUT ALMOST BECAUSE YOU CAN FILL UP. AND
11:23:20 20 THIS DATA, WHEN BUSINESS LEADERS OR GOVERNMENT LEADERS SAW IT,
11:23:22 21 IT'S A BILLION PRODUCT, NUMBER ONE POSITION FOR US.

11:23:23 22 CLOUD COMPUTING IS WHAT YOU SAW KIND OF IN THE MIDDLE OF
11:23:26 23 THIS. IT'S THE ABILITY TO BRING SERVER TECHNOLOGY AND
11:23:29 24 NETWORKING TOGETHER.

11:23:30 25 WE BECAME THE NUMBER ONE PLAYER IN BLADE SERVICES, AN

11:23:35 1 INDUSTRY MOST PEOPLE THOUGHT WE COULDN'T EVEN PARTICIPATE IN.
11:23:37 2 AND PLAYERS LIKE HP SAID WE WOULD BE OUT OF THE BUSINESS VERY
11:23:41 3 QUICKLY. AND WE BECAME THE NUMBER ONE PLAYER. IT'S ABOUT A \$3
11:23:46 4 BILLION MARKET. WIFI, SIMILAR SCENARIO.

11:24:00 5 SWITCHING, WE MOVED TO AFTER THAT, IT'S ABOUT A \$15
11:24:05 6 BILLION MARKET FOR US TODAY. AGAIN, NUMBER ONE POSITION.

11:24:08 7 Q. NOW WERE ALL OF THESE CATEGORIES THAT YOU JUST TALKED
11:24:11 8 ABOUT ALL DEVELOPED INTERNALLY AT CISCO?

11:24:12 9 A. WE USED A COMBINATION -- THE ANSWER TO YOUR QUESTION IS
11:24:16 10 NO.

11:24:16 11 WE USED A COMBINATION INTERNALLY DEVELOPED, USED A
11:24:19 12 COMBINATION OF PARTNERING AND USED A COMBINATION OF
11:24:21 13 ACQUISITIONS AND THEN BRING THEM TOGETHER ARCHITECTURALLY TO
11:24:25 14 PRODUCE BUSINESS OUTCOMES.

11:24:26 15 Q. NOW THE LAST AREA ON THE LEFT THERE IS APPLICATION CENTRIC
11:24:30 16 INFRASTRUCTURE. WHAT IS THAT REFERRING TO?

11:24:32 17 A. THIS IS KIND OF A TECHIE TERM. IF YOU THINK ABOUT WHAT
11:24:36 18 YOU MIGHT READ ABOUT THE CURRENT TRENDS THAT ARE AROUND
11:24:40 19 SOFTWARE DEFINED NETWORKS. BEING ABLE TO MOVE YOUR
11:24:44 20 APPLICATIONS ANYWHERE YOU WANT IN THE NETWORK. AS THAT OCCURS,
11:24:47 21 YOU WILL HAVE A NUMBER OF KEY INTELLIGENT POINTS THAT ARE
11:24:51 22 REALLY IMPORTANT TO CISCO TO BE ABLE TO LEAD IN.

11:24:54 23 AND THIS IS WHERE YOU USE A COMBINATION OF SWITCHING AND
11:24:57 24 INTERFACE TECHNOLOGY PRODUCTS AND SOFTWARE TO REALLY PRODUCE
11:25:01 25 THE RESULTS. AND IT IS THE NEXT GENERATION OF NETWORKING.

11:25:04 1 Q. AND IS THAT TECHNOLOGY USED IN THE DATA CENTER, WHAT WE
11:25:08 2 TALKED ABOUT IN THIS CASE?

11:25:09 3 A. YES, IT WAS.

11:25:09 4 AND AGAIN, WE MOVED TO THE NUMBER ONE PLAYER IN THIS
11:25:13 5 CATEGORY WITH ABOUT \$2.4 BILLION IN SALES, AND GROWING FASTER
11:25:18 6 THAN OUR PEERS ARE IN THIS SEGMENT OF THE INDUSTRY.

11:25:20 7 Q. AND DOES ARISTA COMPETE WITH CISCO IN THIS DATA CENTER
11:25:23 8 MARKET?

11:25:24 9 A. YES, THEY DID. A GOOD COMPETITOR.

11:25:27 10 Q. LET'S TALK A LITTLE BIT ABOUT ARISTA. WHEN DID YOU FIRST
11:25:30 11 HEAR ABOUT ARISTA, THE COMPANY?

11:25:32 12 A. I FIRST HEARD ABOUT ARISTA, THE COMPANY, IN 2004. THE
11:25:35 13 VALLEY KNOWS MOST OF THE KEY PLAYERS PRETTY WELL.

11:25:39 14 ANDY BECHTOLSHEIM WAS THE GUY OUT OF SUN, REALLY, REALLY
11:25:43 15 GOOD ENGINEERING LEAD. HE WAS THE CEO OF A COMPANY CALLED
11:25:48 16 GRANITE THAT WE BOUGHT. AND THEN WE FOUNDED ARISTA IN 2004.
11:25:53 17 JUST A LITTLE RADAR WENT UP, A LITTLE BLIP, IF YOU WILL, THAT
11:25:58 18 THIS COULD EITHER BE SOMEBODY WE COULD COMPETE WITH, SOMEBODY
11:26:01 19 WE MIGHT ACQUIRE AND JUST NEEDED TO BE AWARE OF WHEN IT COMES
11:26:04 20 TO IT.

11:26:04 21 Q. NOW WHEN ARISTA WAS FORMED OR YOU FIRST HEARD OF THEM IN
11:26:08 22 2004, WHEN DID YOU FIRST START SEEING ARISTA COMPETING WITH
11:26:11 23 CISCO IN THE DATA CENTER MARKET?

11:26:13 24 A. I WOULD SAY PROBABLY ABOUT 2008 WE BEGAN TO SEE THEM IN
11:26:22 25 CERTAIN PRODUCT AREAS, PRIMARILY A NICHE PLAYER, LOW LATENCY.

11:26:28 1 I'M SORRY, THE CAPABILITY TO HAVE THE RESPONSE TIME QUICKLY IN
11:26:31 2 WALL STREET-TYPE OF APPLICATIONS.

11:26:36 3 SO IT WAS 2008, WAS THE FIRST TIME I SAW THE DATA CENTER.
11:26:39 4 THE FIRST TIME STAY STARTED PLAYING IN THE LARGER SCALE WAS
11:26:42 5 PROBABLY 2011. THEY BROUGHT OUT A HIGH END SWITCH TOWARD THE
11:26:46 6 END OF 2010, AND THAT'S WHEN WE BEGAN TO SEE THEM MORE OF A
11:26:52 7 BIGGER POTENTIAL COMPETITOR. MORE ON A LARGER SCALE, IF YOU
11:26:56 8 WILL.

11:26:56 9 Q. AND AT THAT TIME, IN THAT LATE 2010, 2011 TIME PERIOD,
11:27:04 10 WHAT SWITCHES WAS CISCO SELLING IN THE DATA CENTER?

11:27:07 11 A. OUR KEY HIGH END SWITCHES, AND THIS WAS PROBABLY OUR FIFTH
11:27:10 12 OR SIXTH GENERATION OF HIGH END SWITCHES WHICH WERE THE NEXUS
11:27:14 13 7000 AND THE NEXUS 5000.

11:27:16 14 Q. WHO AT CISCO DESIGNED THE NEXUS 7000?

11:27:21 15 A. JAYSHREE ULLAL HAD THE RESPONSIBILITY FOR THE 7000.
11:27:26 16 WHETHER SHE SPECIFICALLY DESIGNED IT OR NOT, I'M NOT SURE. BUT
11:27:28 17 SHE LEAD THE WHOLE GROUP AND DID A VERY GOOD JOB ON THE 7000.

11:27:32 18 Q. IS THAT THE SAME JAYSHREE ULLAL WHO IS AT CISCO NOW?

11:27:34 19 A. YES, IT IS.

11:27:35 20 Q. SO SHE LEFT CISCO TO JOIN ARISTA TO COMPETE AGAINST THE
11:27:39 21 PRODUCT SHE WAS RESPONSIBLE FOR AT CISCO?

11:27:42 22 MR. VAN NEST: OBJECTION. LEADING.

11:27:42 23 THE COURT: OVERRULED.

11:27:44 24 THE WITNESS: OVERRULED MEANS I CAN ANSWER?

11:27:46 25 THE COURT: YOU MAY ANSWER.

11:27:47 1 THE WITNESS: OKAY. THE ANSWER WOULD BE YES.

11:27:49 2 BUT JAYSHREE WAS SOMEBODY I SPONSORED. I REALLY LIKE HER,
11:27:53 3 SHE'S A GOOD PERSON AND A GOOD ENGINEER, AND I WAS DISAPPOINTED
11:27:58 4 SHE WENT TO A COMPETITOR. BUT SHE DID GO TO A COMPETITOR WITH
11:28:01 5 PRODUCTS, DIRECTLY THE ONES THAT SHE DEVELOPED.

11:28:03 6 Q. NOW WHEN THE ARISTA PRODUCT STARTED COMPETING WITH YOU AND
11:28:07 7 THE DATA CENTER IN 2011 AGAINST THE CISCO NEXUS 7000 AND THE
11:28:12 8 OTHER SWITCH, WAS ARISTA A TOUGH COMPETITOR AT THAT TIME?

11:28:16 9 A. YES, THEY WERE A GOOD COMPETITOR. AND IN EACH PRODUCT
11:28:19 10 AREA, WE HAVE A NUMBER OF GOOD COMPETITORS, SO CLEARLY NOT THE
11:28:22 11 ONLY COMPETITOR IN THE DATA CENTER, THOUGH.

11:28:25 12 Q. AND DID CISCO START TO LOSE SALES TO ARISTA AT THAT TIME?

11:28:28 13 A. YES, BY DEFINITION, WE DID.

11:28:30 14 Q. LET'S TAKE A LIKE AT THE NEXT SLIDE IN YOUR BINDER,
11:28:34 15 CHAMBERS SLIDE 3, PLEASE, AND IF WE COULD PUT IT UP ON THE
11:28:37 16 SCREEN.

11:28:37 17 WHAT DID DO WE SEE HERE IN CHAMBERS SLIDE THREE?

11:28:41 18 A. WHENEVER YOU BUILD A ROUTER OR A SWITCH, YOU ALMOST WANT
11:28:44 19 TO THINK OF IT IN PRETTY SIMPLISTIC TERMS.

11:28:47 20 YOU SEE OUR HIGH END SWITCH LINE, THE NEXUS 9000, YOU
11:28:51 21 THINK OF IT AS REAL BIG, MEDIUM SIZED, AND SMALLER. SO THOSE
11:28:55 22 WERE THE SWITCHES THAT BRING TO LIFE THE SOFTWARE DEFINED
11:28:59 23 CAPABILITIES, NAVIGATION AND INFRASTRUCTURE.

11:29:02 24 YOU SEE A PERSON OVER ON THE LEFT SIDE INTERFACING THESE
11:29:06 25 SWITCHES, THEY ARE REALLY COMPLEX. AND IT'S SO IMPORTANT THAT

11:29:10 1 YOU TAKE THAT COMPLEXITY OUT FROM A USER INTERFACE AND SO YOU
11:29:15 2 DEVELOP A SERIES OF A -- EITHER GRAPHICAL INTERFACES OR
11:29:19 3 COMMAND-LINE INTERFACES THAT ALLOW YOU TO TALK TO THESE
11:29:22 4 COMPUTERS IN AN EFFECTIVE WAY ON IT.

11:29:26 5 THAT'S A HUGE COMPETITIVE ADVANTAGE TO BE ABLE TO DO THAT
11:29:28 6 WELL.

11:29:28 7 Q. AND ARE THESE SWITCHES THAT YOU BROUGHT OUT TO THE MARKET
11:29:32 8 AFTER AS SORT OF THE NEXT GENERATION TO THE NEXUS 7000?

11:29:36 9 A. YES, THEY ARE.

11:29:37 10 Q. AND DID THEY HIT THE DATA CENTER MARKET AROUND 2013; IS
11:29:41 11 THAT RIGHT?

11:29:41 12 A. LATE 2013, 2014.

11:29:48 13 Q. AND DO THESE NEXUS 7000 SWITCHES USE THE CISCO PROPRIETARY
11:29:53 14 CLI AND OTHER USER INTERFACES THAT CISCO IS KNOWN FOR?

11:29:57 15 A. YES, THEY BASICALLY -- WHAT IT SAYS IS THE INTERFACE TO
11:30:04 16 US, THROUGH OUR COMMAND-LINE INTERFACE CAPABILITY, AND OUR --
11:30:08 17 THEY USED OUR TEACHING THAT WE GIVE OUR CUSTOMERS ON HOW TO USE
11:30:13 18 THIS AND INTERFACE TO THEM THROUGH THE MANUALS AND THROUGH THE
11:30:17 19 ALT SCREENS, ET CETERA.

11:30:18 20 Q. AND ARE THE NEXUS 9000 SWITCHES STRONG COMPETITORS IN THE
11:30:22 21 DATA CENTER MARKET?

11:30:23 22 A. YEAH, THEY HAVE BEEN VERY GOOD. IF YOU LOOK AT, AND I
11:30:26 23 DON'T KNOW IF IT'S ON THE SCREEN OR NOT, BUT THE AWARDS WE WON.

11:30:28 24 Q. WHAT DO WE SEE ON THE BOTTOM OF SLIDE 3, WHY DON'T YOU
11:30:32 25 TELL US IT SAYS AWARDS THERE. WHAT'S THE FIRST AND SECOND ONE

11:30:35 1 YOU SEE THERE?

11:30:36 2 A. WELL, THE FIRST ONE IS IN 2014, WHICH IS WHEN YOU BEGIN TO
11:30:39 3 GET THE VOLUME, IT REALLY TALKED ABOUT OUR INNOVATION IN HIGH
11:30:43 4 END SWITCHING. WE HAVE ALWAYS BEEN THE LEADER, BUT AS PRODUCTS
11:30:47 5 GET OLDER, THEN YOU GO TO THE NEXT GENERATION.

11:30:48 6 AND SO THIS WAS IN 2014, WHERE WE BEGIN TO GET OUR
11:30:52 7 LEADERSHIP BACK IN TERMS OF THE PRODUCTS. AND IT WAS THE TOP
11:30:59 8 AWARD FROM THE TECHNOLOGY SPOTLIGHT, THE 2014 BEST IN INTEROP.

11:31:02 9 THAT'S IMPORTANT TO US BECAUSE THAT'S THE MOST PHYSICAL
11:31:06 10 SHOW IN THE TECHIE GROUP, IN MY OPINION, AND WE ACTUALLY WON IN
11:31:09 11 TERMS OF THE TOP DATA CENTER SWITCH VERSUS ARISTA.

11:31:13 12 Q. SO IN THAT 2014 TIMEFRAME, AT THE TIME OF THE BEST OF
11:31:18 13 INTEROP AWARD, WAS ARISTA'S SWITCH CONSIDERED IN THAT
11:31:23 14 COMPETITION AS WELL?

11:31:23 15 A. YES.

11:31:24 16 Q. AND WHOSE SWITCH WON AS THE BEST IN THE SHOW?

11:31:26 17 A. WE WON AS BEST IN SHOW.

11:31:28 18 Q. NOW EVEN THOUGH YOUR SWITCH, THE NEXUS 9000, WAS THE BEST
11:31:35 19 IN THE SHOW AT INTEROP IN 2014, WAS ARISTA STILL A TOUGH
11:31:41 20 COMPETITOR OF CISCO'S AT THAT TIME?

11:31:44 21 A. ABSOLUTELY.

11:31:45 22 Q. AND WAS CISCO STILL LOSING SALES TO ARISTA AT THE TIME?

11:31:48 23 A. LOSING SALES OPPORTUNITIES, YES.

11:31:50 24 Q. NOW DID THERE COME A TIME, SIR, IN THE COMPETITION WHERE
11:31:54 25 ARISTA WHERE YOU LEARNED THEY WERE NOT COMPETING FAIRLY WITH

11:31:57 1 YOU?

11:31:57 2 A. YES, THERE WAS.

11:31:58 3 Q. AND WHEN WAS THAT?

11:31:59 4 A. THE FIRST INDICATION WAS IN THE SPRING OF 2014 AS A RESULT
11:32:05 5 OF AN ARTICLE THAT OUR CHIEF LEGAL COUNSEL BROUGHT TO MY
11:32:08 6 ATTENTION WITH SOME CHALLENGES.

11:32:11 7 Q. AND WHAT DID YOU LEARN AT THAT TIME, JUST GENERALLY?

11:32:13 8 A. WELL, WHAT WE LEARNED WAS THAT THE SENIOR MANAGEMENT HAD
11:32:16 9 STATED THAT --

11:32:18 10 Q. THE SENIOR MANAGEMENT OF CISCO OR OF ARISTA?

11:32:20 11 A. I'M SORRY, OF ARISTA, HAD STATED VERY PUBLICLY THAT THEY
11:32:24 12 DIDN'T COMPETE WITH CISCO IN THE TRADITIONAL WAY, TO DO THAT
11:32:28 13 WOULD NOT HAVE GOTTEN GOOD RESULTS, IT WOULD HAVE TAKEN THEM
11:32:32 14 15,000 ENGINEERS AND 15 YEARS TO GET -- TO BE ABLE TO COMPETE
11:32:37 15 AGAINST US IN THAT WAY. SO IT WAS REALLY ONE THAT KIND OF SET
11:32:41 16 OFF THE WARNING SIGNALS AND ALARM BELLS ON IT.

11:32:45 17 AS WE STARTED TO DELVE INTO IT MORE, WE THEN FOUND THAT
11:32:48 18 OTHER PEOPLE AT ARISTA, A CHIEF TECHNICAL OFFICER AS AN
11:32:53 19 EXAMPLE, PRIOR CISCO EMPLOYEE, GOOD PERSON BY THE WAY, HAD
11:32:56 20 ACTUALLY SAID THAT BILL WOULD NEED TO PUT THE ARISTA PRODUCT IN
11:33:00 21 OUR NETWORKS AS ALMOST LIKE A DROP-IN CAPABILITY BECAUSE IT WAS
11:33:04 22 SO CISCO PROPRIETARY IOS-LIKE. I DIDN'T USE PROPRIETARY, BUT
11:33:10 23 HE SAID IOS-LIKE, WHERE THE CUSTOMERS COULD USE THIS, IS VERY
11:33:14 24 IMPORTANT.

11:33:14 25 THEN AS THIS OCCURRED, I REACHED BACK TO MY TEAM AND I

11:33:17 1 SAID, THIS IS REALLY KEY BECAUSE WE COMPETE ON INNOVATIONS, NOT
11:33:21 2 ON LAWSUITS. AND I PUSHED HIM VERY HARD ABOUT THE WERE PATENTS
11:33:25 3 THEY WERE BRINGING TO MY ATTENTION REALLY MEANINGFUL, DID THEY
11:33:28 4 REALLY MAKE A DIFFERENCE IN THE INDUSTRY.

11:33:30 5 AND AS WE DID THAT, I REACHED BACK AND THEY CAME BACK WITH
11:33:34 6 A DIFFERENT SET OF PATENTS AND APPROACHES. AND THEN I WANTED
11:33:36 7 TO MAKE SURE THAT BOTH OUR OWN ENGINEERS, PEOPLE IN THE SILICON
11:33:41 8 VALLEY, THE BUSINESS PRESS AND OVERALL AS A GROUP, WE
11:33:43 9 CONSIDERED WHAT WE WERE DOING HERE AS NOT ONLY LEGALLY CORRECT,
11:33:46 10 BECAUSE BY THIS TIME I WAS PRETTY SURE WE WOULD WIN ON THE
11:33:49 11 LEGAL SIDE, BUT ALSO PERCEPTIONALLY.

11:33:52 12 SO WE TALKED TO OUR TOP ENGINEERS. I WAS HESITANT ON
11:33:55 13 THIS, BUT IT WAS A VERY SIMILAR TO WHAT -- ONE OTHER TIME WE
11:33:59 14 SUED A COMPANY CALLED HUAWEI A DECADE BEFORE. SO IT TOOK ABOUT
11:34:03 15 TEN MONTHS IN TOTAL.

11:34:04 16 Q. AND WHEN YOU FOUND OUT EXACTLY WHAT ARISTA WAS DOING, IN
11:34:06 17 YOUR VIEW, WAS AT A FAIR WAY TO COMPETE WITH CISCO?

11:34:09 18 A. WELL, IT WAS EXTREMELY UNFAIR AND VERY DISAPPOINTING.

11:34:14 19 Q. AND HOW DID THAT MAKE YOU FEEL ABOUT ARISTA AND THE FORMER
11:34:17 20 CISCO EMPLOYEES THAT ARE AT ARISTA?

11:34:19 21 A. WELL FIRST, FROM A FINANCIAL PERSPECTIVE, IT COST US
11:34:22 22 SALES. IT ALSO REALLY HURT BECAUSE AT CISCO WE HAD LITERALLY,
11:34:27 23 ON OUR BEING BADGE, JUST DO THE RIGHT THING. TREAT OTHERS WITH
11:34:31 24 RESPECT.

11:34:31 25 I TEND TO TRUST PEOPLE. WE DON'T GO LOOKING TO SEE IF

11:34:34 1 PEOPLE VIOLATE OUR PATENTS OR LOOK FOR OTHER THINGS, WE TEND TO
11:34:38 2 TRUST PEOPLE IN THE MARKET PRETTY OPENLY. AND IT WAS EXTREMELY
11:34:42 3 SURPRISING.

11:34:43 4 IT'S ONE THING FOR THAT TO OCCUR HALFWAY AROUND THE WORLD
11:34:46 5 WITH PEOPLE YOU DON'T KNOW, IT'S ANOTHER FOR IT TO OCCUR FROM
11:34:48 6 PEOPLE WHO YOU ARE FRIENDS WITH WHO STOLE FROM YOU, AND THEY
11:34:53 7 DID STEAL FROM US.

11:34:54 8 Q. WAS IT A HARD DECISION FOR YOU TO FILE THIS CASE, SIR?

11:34:57 9 A. IT WAS EXTREMELY HARD. I WAS PROBABLY THE LAST ONE TO
11:35:01 10 SAY, YOU ARE RIGHT, WE HAVE TO DO THIS.

11:35:03 11 Q. WHY WAS IT SO HARD TO FILE THE CASE?

11:35:04 12 A. I BELIEVE ON COMPETING ON INNOVATION, AND I BELIEVE WE
11:35:08 13 HAVE DONE THAT, I THINK, EXTREMELY WELL.

11:35:10 14 ALSO, I'M HESITANT THAT WHEN YOU DO SOMETHING, YOU WANT TO
11:35:14 15 BE SURE YOU LEGALLY ARE CORRECT BUT ALSO PEOPLE PERCEIVE IT TO
11:35:19 16 BE CORRECT.

11:35:19 17 AND IT'S HARD ACCUSING PEOPLE WHO YOU ARE FRIENDS WITH,
11:35:21 18 AND THEY STILL ARE MY FRIENDS, OF STEALING FROM YOU.

11:35:24 19 Q. SO WHAT YOU ULTIMATELY TIPPED YOU TOWARDS FILING THE CASE,
11:35:28 20 WHAT WAS THE DECIDING FACTORS, OR WHAT WERE THE DECIDING
11:35:32 21 FACTORS?

11:35:32 22 A. I THINK IT'S THE COMBINATION --

11:35:34 23 MR. VAN NEST: OBJECTION, YOUR HONOR. DISCOVERY.

11:35:37 24 THIS HAS BEEN PRIVILEGED AND HAS BEEN ASSERTED ON THESE
11:35:40 25 DISCUSSIONS.

11:35:41 1 MR. DESMARAIS: I'M NOT ASKING FOR WHAT HE LEARNED
11:35:43 2 FROM HIS LAWYERS I'M ASKING ABOUT HIS PERSONAL --

11:35:45 3 THE COURT: I'M NOT GOING ON ALLOW THE WITNESS TO GO
11:35:48 4 INTO THIS AREA IF IT WAS NOT ALLOWED DURING DISCOVERY. THE
11:35:51 5 OBJECTION IS SUSTAINED.

11:35:52 6 MR. DESMARAIS:

11:35:52 7 Q. WAS THE ULTIMATE DECISION TO FILE THE LAWSUIT YOUR
11:35:55 8 DECISION AS CEO SIR?

11:35:57 9 A. YES, IT WAS.

11:35:58 10 Q. NOW YOU SAID EARLIER YOU KNEW JAYSHREE ULLAL FROM HER TIME
11:36:04 11 AT CISCO. PRIOR TO FILING THE LAWSUIT, DID YOU CALL ARISTA OR
11:36:09 12 CALL MS. ULLAL TO DISCUSS?

11:36:11 13 A. NO, I DID NOT.

11:36:13 14 Q. AND WHY NOT?

11:36:14 15 A. THIS WAS SO BLATANT. IT WASN'T A PATENT, IT WAS FOUR
11:36:22 16 MAJOR PATENTS. IT WASN'T JUST OUR PROPRIETARY COMMAND-LINE
11:36:26 17 INTERFACE, IT WAS THE COPYING OUR MANUALS, EVEN THE TYPOS IN
11:36:30 18 THE MANUALS, EVEN THE HELP SCREENS, EVEN THE HIERARCHIES WE
11:36:34 19 USED, ET CETERA.

11:36:34 20 AND IT HAD TO BE KNOWN BECAUSE A NUMBER OF THE ENGINEERS
11:36:38 21 AT ARISTA ACTUALLY DID SOME OF THESE PATENTS, THE LEADERS AT
11:36:43 22 ARISTA ACTUALLY SUPERVISED THOSE ENGINEERS. EVERYONE HAD SEEN
11:36:47 23 IN THIS GROUP AT THE TOP MANAGEMENT, INCLUDING THE BOARD OF
11:36:50 24 DIRECTORS, OUR DECISION TO HOLD HUAWEI ACCOUNTABLE, A CHINESE
11:36:55 25 COMPETITOR WHO VERY BLATANTLY COPIED OUR CLI CAPABILITIES, OUR

11:36:59 1 PATENTS, SAME TYPE OF THING, THE MISTAKES AND SPELLING IN THE
11:37:04 2 MANUALS, SOURCE CODE, ET CETERA. AND THEY KNEW THAT WE HELD
11:37:08 3 THEM VERY ACCOUNTABLE FOR DOING THIS, AND THAT INCLUDES EVEN
11:37:13 4 THEIR BOARD MEMBERS WHO WERE EITHER TESTIFYING IN THE CASE
11:37:16 5 AGAINST HUAWEI OR HEADED UP OUR LEGAL AND BUSINESS DEVELOPMENT
11:37:20 6 AND WERE PART OF THIS DECISION ON HOW WE SUED HUAWEI. SO IT
11:37:24 7 WAS THE BREADTH AND DEPTH.

11:37:26 8 AND IN MY MIND, THERE WAS NO DOUBT THAT THEY KNEW EXACTLY
11:37:29 9 WHAT THEY WERE DOING AND A PHONE CALL WOULD NOT HAVE GOTTEN THE
11:37:32 10 RESULTS.

11:37:32 11 AND CANDIDLY, IT'S SHOWN SO FAR. HERE WE ARE APPROACHING
11:37:36 12 A YEAR AND A HALF, TWO YEARS LATER AND STILL HAVE NOT GOT
11:37:39 13 ARISTA TO STOP.

11:37:39 14 Q. NOW OVER THE YEARS AS YOU HAVE BEEN LEADING CISCO, HAVE
11:37:43 15 OTHER CISCO EMPLOYEES LEFT CISCO TO GO TO OTHER COMPANIES TO
11:37:48 16 COMPETE WITH CISCO?

11:37:49 17 A. UNFORTUNATELY, YES, MANY.

11:37:51 18 Q. CAN YOU NAME A FEW OF THEM?

11:37:52 19 A. YES. I THINK IF YOU WERE TO LOOK ACROSS THE VALLEY, IN
11:37:56 20 THE AREA OF -- JUNIPER IS A REALLY TOUGH COMPETITOR AND HAS
11:38:00 21 BEEN FOR OVER A DECADE.

11:38:01 22 Q. ACTUALLY, LET ME STOP YOU THERE AND LET'S JUST MAKE A
11:38:04 23 QUICK LIST.

11:38:09 24 SO YOU SAID JUNIPER, LET ME WRITE THAT DOWN. TELL US A
11:38:16 25 LITTLE BIT ABOUT SOME OF THE CISCO FOLKS WHO WENT OVER TO

11:38:20 1 JUNIPER OR ARE RUNNING JUNIPER.

11:38:22 2 A. WELL, I THINK THEIR CEO IS EX-CISCO. THEY PROBABLY HAVE
11:38:29 3 TWO OR FOUR BOARD MEMBERS THAT ARE EX-CISCO, A LOT OF THEIR
11:38:34 4 ENGINEERING TALENT IS EX-CISCO.

11:38:36 5 Q. HAVE YOU HEARD OF A COMPANY CALLED VMWARE?

11:38:39 6 A. YES.

11:38:39 7 Q. TELL US A LITTLE BIT ABOUT VMWARE?

11:38:42 8 A. THEY ARE A VERY IMPORTANT PLAYER IN THIS AREA OF SOFTWARE
11:38:44 9 DEFINED NETWORKS AND APPLICATIONS INFRASTRUCTURE. THEY WERE A
11:38:51 10 PARTNER WITH US WITH DMC AND THEN COMPETED AGAINST US. WE HAVE
11:38:56 11 CISCO EMPLOYEES THERE AT THE CHIEF OPERATING OFFICER LEVEL, AND
11:39:04 12 FOR A WHILE WE HAD A FAIR AMOUNT OF OUR TEAM IN A JOINT
11:39:06 13 DEVELOPMENT WITH VMWARE.

11:39:06 14 Q. HAVE YOU HEARD OF BLUEJEANS NETWORKS?

11:39:08 15 A. YEAH. THAT'S A COMPETITOR, AGAIN, CEO AND MULTIPLE PEOPLE
11:39:12 16 IN THE ORGANIZATION, IN THE VIDEO CONFERENCING, THAT
11:39:17 17 TELEPRESENCE-TYPE OF CAPABILITY THAT WE TALKED ABOUT BEFORE.

11:39:19 18 Q. HAVE YOU HEARD OF VIPTELA?

11:39:22 19 A. YEAH, THEY ARE A GOOD COMPETITOR IN THE AREA OF, I
11:39:28 20 DESCRIBE IT AS WIRELESS CAPABILITY IN USER COMPUTING. AGAIN, A
11:39:33 21 LOT OF CISCO PEOPLE, MAYBE AS MANY AS FIVE OR SIX OR SEVEN OF
11:39:37 22 THEIR TOP MANAGEMENT TEAM AT CISCO, EX-CISCO.

11:39:41 23 Q. HAVE YOU HEARD OF SKYPE?

11:39:42 24 A. YEAH, IT WAS A COMPANY THAT'S A COMPETITOR OF OURS BOUGHT
11:39:47 25 BY MICROSOFT. THE CEO THERE, TONY BATES, A REALLY GOOD PERSON,

11:39:52 1 VERY MUCH A PEER TO JAYSHREE IN TERMS OF THAT, AGAIN IN THE
11:39:57 2 VIDEO AREA.

11:39:57 3 Q. HAVE YOU EVER HEARD OF AVAYA?

11:39:59 4 A. YEAH, A GOOD COMPETITOR IN THE VOICE SEGMENT OF THE
11:40:03 5 BUSINESS.

11:40:04 6 I THINK BOTH THE -- A MEMBER OF THE BOARD FROM ARISTA IS
11:40:09 7 ON THAT, CHARLIE GIANCARLO, CEO THERE FOR A WHILE. AND THEN
11:40:14 8 KEVIN KENNEDY IS THEIR CEO, THERE FOR A NUMBER OF YEARS. GOOD
11:40:19 9 COMPETITOR.

11:40:20 10 Q. NOW LET'S STOP THERE. IF WE WANTED TO CONTINUE MAKING A
11:40:23 11 LIST OF COMPANIES WHERE CISCO EMPLOYEES HAVE LEFT CISCO TO GO
11:40:27 12 COMPETE AGAINST CISCO AT ANOTHER COMPANY, HOW MANY COMPANIES
11:40:30 13 COULD WE PUT ON THIS LIST?

11:40:32 14 A. I WOULD SAY PROBABLY SEVERAL DOZEN.

11:40:36 15 Q. NOW LOOKING AT THE LIST THAT WE HAVE MADE, LET'S TAKE THE
11:40:47 16 TOP TWO JUNIPER AND VMWARE. DO THEY COMPETE WITH YOU IN THE
11:40:52 17 DATA CENTER ALONG WITH ARISTA?

11:40:53 18 A. ABSOLUTELY. JUNIPER IS VERY TOUGH, AND ROUTING AND
11:41:01 19 SWITCHING HAVE BEEN PROBABLY THE TOUGHEST COMPETITOR YEAR IN
11:41:04 20 AND YEAR OUT WITH THE LAST USER INTERFACE.

11:41:08 21 Q. NOW, WOULD YOU CONSIDER THESE PEOPLE AND THE OTHER SEVERAL
11:41:13 22 DOZEN TOUGH COMPETITORS?

11:41:14 23 A. OH, ABSOLUTELY.

11:41:15 24 Q. AND IN THE DATA CENTER, DO JUNIPER AND VMWARE TAKE SALES
11:41:19 25 FROM CISCO IN SOME ACCOUNTS?

11:41:21 1

A. ABSOLUTELY.

11:41:22 2

Q. NOW DID YOU SUE ANY OF THESE OTHER COMPANIES SIMPLY

11:41:25 3

BECAUSE CISCO EMPLOYEES LEFT CISCO TO GO TO ANOTHER COMPANY TO

11:41:28 4

COMPETE AGAINST YOU, WHERE YOU LOST SALES?

11:41:31 5

A. NO, WE DID NOT.

11:41:32 6

Q. AS FAR AS YOU KNOW AT THESE OTHER COMPANIES, DID THE

11:41:38 7

FORMER CISCO EMPLOYEES WHO ARE NOW AT THOSE COMPANIES COMPETING

11:41:42 8

AGAINST CISCO, DID THEY TAKE INTEREST CISCO INTELLECTUAL

11:41:45 9

PROPERTY WITH THEM?

11:41:45 10

A. NOT TO THE BEST OF MY KNOWLEDGE, WE HAVE NO INDICATION

11:41:49 11

THAT THAT THEY DID.

11:41:51 12

MR. DESMARAIS: YOUR HONOR, I WOULD LIKE TO MARK THIS

11:41:53 13

AS A DEMONSTRATIVE. WHAT'S THE NEXT NUMBER? 4826.

11:41:58 14

THE COURT: OF COURSE.

11:41:58 15

(PLAINTIFF'S EXHIBIT 4826 WAS MARKED FOR IDENTIFICATION.)

11:42:01 16

MR. DESMARAIS:

11:42:01 17

Q. NOW TURNING THEN BACK TO ARISTA, IS IT NECESSARY FOR

11:42:05 18

ARISTA TO COPY CISCO'S CLI OR USER MANUALS OR OTHER USER

11:42:13 19

INTERFACE FEATURES IN ORDER TO COMPETE WITH CISCO LIKE THESE

11:42:16 20

OTHER COMPANIES?

11:42:17 21

A. BY COPYING YOU ARE SAYING NOT CISCO-LIKE OR THE OVERALL

11:42:23 22

APPROACH, IS IT NECESSARY TO STEAL THE COMMANDS TO INFRINGE

11:42:26 23

UPON OUR PATENTS TO COPY, LITERALLY, THE USER MANUALS, THE

11:42:31 24

HIERARCHIES, THE HELPDESC SCREENS, THE ANSWER IS NO. ALL

11:42:36 25

COMPANIES USE A COMBINATION OF DIFFERENT WAYS OF TAKING THE

11:42:39 1 COMPLEXITY OUT OF THOSE COMPUTER SYSTEMS, AND OTHER PEOPLE HAVE
11:42:43 2 BEEN ABLE TO DO THIS IN DIFFERENT WAYS WITHOUT BLATANT COPYING
11:42:48 3 ON CATEGORIES.

11:42:50 4 Q. NOW YOU HAVE BEEN WITH CISCO SINCE 1991. IN THAT TIME,
11:42:54 5 HOW MANY CASES LIKE ARISTA HAVE YOU SEEN?

11:42:55 6 A. JUST ONE OTHER.

11:42:56 7 Q. IN GENERAL TERMS, WHAT WAS THAT OTHER CASE?

11:43:01 8 A. IT'S A CASE WITH A CHINESE MANUFACTURER CALLED HUAWEI.

11:43:03 9 VERY, VERY SIMILAR TO ARISTA IN THE FACT THAT THEY COPIED OUR
11:43:07 10 COMMAND LINED INTERFACE CAPABILITIES, A NUMBER OF OUR PATENTS,
11:43:13 11 SIMILAR IN THAT THEIR USER MANUALS ACTUALLY HAD THE SAME TYPE
11:43:17 12 OF MISTAKES IN OUR USER MANUALS, WHICH MEANS THEY DIDN'T EVEN
11:43:22 13 READ THEM OR CORRECT THEM. SIMILAR HELP SCREENS.

11:43:24 14 THEY DID STEAL SOURCE CODE. THEY DID NOT HAVE THE NUMBER
11:43:27 15 OF EXECUTIVES THAT WERE AT CISCO. SO THEY MAY NOT HAVE BEEN
11:43:30 16 AWARE OF OUR PATENTS, THEY MAY NOT, THERE WAS NO CASE BEFORE
11:43:33 17 THAT ON US HOLDING PEOPLE VERY ACCOUNTABLE FOR OUR PROPRIETARY
11:43:39 18 COMMAND LINE INTERFACE TYPE CAPABILITIES.

11:43:41 19 SO SIMILAR IN MOST WAYS, DIFFERENT IN PERHAPS THAT THEY
11:43:46 20 DID NOT HAVE THE PRIOR CISCO EXECs OR KNOWLEDGE OF OUR PATENTS
11:43:51 21 AND OUR PRODUCT STRENGTH LIMITATION.

11:43:52 22 Q. WOULD YOU TURN IN YOUR BINDER TO TRIAL EXHIBIT 4671, IT'S
11:43:57 23 ALREADY ADMITTED, SO I WILL PUT IT UP ON THE OVERHEAD
11:44:00 24 PROJECTOR.

11:44:04 25 IS THIS THE COMPLAINT CISCO FILED AGAINST HUAWEI?

11:44:07 1

A. YES, IT IS.

11:44:08 2

Q. WHEN WAS THE COMPLAINT FILED?

11:44:09 3

A. THE DATE UP HERE IN THE RIGHT IS JANUARY 22ND, 2003.

11:44:14 4

Q. AND IS THAT COMPLAINT A PUBLIC DOCUMENT?

11:44:17 5

A. YES, IT IS.

11:44:18 6

Q. LET'S TAKE A LOOK, IF WE COULD, AT WHAT CISCO ALLEGED IN

11:44:24 7

THAT COMPLAINT ON PARAGRAPH 15. WHAT DID CISCO ALLEGE IN THAT

11:44:30 8

COMPLAINT AGAINST HUAWEI, IN THE VERY FIRST SENTENCE OF

11:44:33 9

PARAGRAPH 15?

11:44:33 10

A. IS IT ALL RIGHT TO JUST READ OFF THE SCREEN HERE?

11:44:36 11

THE COURT: IT'S JUST FINE TO LOOK AT IT ON THE

11:44:38 12

SCREEN, YES, ABSOLUTELY.

11:44:39 13

THE WITNESS: SO PARAGRAPH 15, A KEY COMPONENT OF

11:44:42 14

COPYRIGHTED IOS SOFTWARE PROGRAMS IS THE COMMAND-LINE INTERFACE

11:44:44 15

OR CLI.

11:44:47 16

Q. AND THEN IF WE LOOK DOWN AT PARAGRAPH 17, WHAT DOES CISCO

11:44:51 17

ALLEGE AGAINST HUAWEI IN THE VERY FIRST SENTENCE OF

11:44:55 18

PARAGRAPH 17?

11:44:57 19

A. DEFENDANTS HAVE ENGAGED IN WHOLESALE COPYING OF CISCO'S

11:45:01 20

CLI.

11:45:01 21

Q. AND THEN IF WE CONTINUE ON PARAGRAPH 17, WHAT IS THE FIRST

11:45:06 22

COMPLETE SENTENCE IN THE TOP OF PAGE 8 OF THE COMPLAINT SAY

11:45:12 23

ABOUT HUAWEI'S ALLEGATIONS OF COPYING?

11:45:15 24

A. JUST READING THE SENTENCE, "A COMPARISON OF THE

11:45:18 25

COMMAND-LINE INTERFACE OF THE OPERATING SYSTEM FOR QUIDWAY

11:45:20 1 ROUTERS, SWITCHES AND OTHER PRODUCTS THAT USE VRP, AND CISCO'S
11:45:27 2 CLI REVEALS REPEATED INCIDENTS OF SLAVISH COPYING."

11:45:34 3 Q. SO IS THERE ANY DOUBT THAT THE HUAWEI CASE WAS ABOUT
11:45:41 4 HUAWEI'S COPYING OF CISCO'S CLI?

11:45:43 5 A. IT WAS ONE OF THE THINGS. BUT AGAIN, IT WAS A VERY BROAD
11:45:48 6 BLATANT COPYING OF MANY, MANY AREAS, BUT THE CLI WAS A LARGE
11:45:53 7 COMPONENT, YES.

11:45:53 8 Q. AND HOW DID THE HUAWEI CASE RESOLVE?

11:45:55 9 A. (REDACTED)

11:46:14 10 Q. AND THIS CASE HAS BEEN PENDING FOR A WHILE, HAS ARISTA
11:46:18 11 AGREED TO STIPULATE?

11:46:19 12 A. NO, THEY HAVE NOT.

11:46:20 13 Q. NOW THERE WAS A TIME WHEN ANOTHER COMPANY, DIGITAL
11:46:24 14 EQUIPMENT CORPORATION, WAS USING CISCO'S CLI AND USER MANUALS?

11:46:29 15 A. YES, THERE WAS.

11:46:29 16 Q. AND WHY WERE THEY DOING THAT?

11:46:31 17 A. THIS WAS PROBABLY IN THE EARLY 90'S, THEY WERE A CISCO
11:46:39 18 PARTNER, WE AUTHORIZED THEM TO USE OUR CLI AND OUR USER
11:46:47 19 MANUALS.

11:46:47 20 Q. AND DID YOU, YOURSELF, SIGN A 1992 AGREEMENT WITH DIGITAL
11:46:51 21 EQUIPMENT THAT AUTHORIZED THEM TO USE THE USER MANUALS AND THE
11:46:53 22 CLI?

11:46:53 23 A. YES, I ACTUALLY DID. I HAD FORGOTTEN ABOUT THAT, I KNEW
11:46:57 24 THAT I DID THE PARTNERSHIP WITH DIGITAL AND IT WAS A
11:47:00 25 MULTI-YEARS AGREEMENT. I ACTUALLY SIGNED THE AGREEMENT TO DO

11:47:03 1 THAT AND THEN INITIALLED EACH OF THE PAGES THAT WERE THE TERMS
11:47:06 2 OF THE AGREEMENT.

11:47:06 3 Q. SO IF DIGITAL EQUIPMENT CORPORATION WAS USING CISCO'S CLI,
11:47:12 4 AND USER MANUALS AFTER 1992, WAS THAT WITH YOUR AUTHORIZATION?

11:47:16 5 A. COMPLETE AUTHORIZATION.

11:47:17 6 Q. AS A PARTNER OF YOURS AT THE TIME?

11:47:20 7 A. ABSOLUTELY.

11:47:20 8 Q. DID ANYONE AT CISCO SIMILARLY AUTHORIZE ARISTA TO USE YOUR
11:47:24 9 CLI AND YOUR USER MANUALS AND THE OTHER THINGS THAT ARE ACCUSED
11:47:28 10 OF IN THIS CASE?

11:47:28 11 A. NO, WE DID NOT.

11:47:30 12 Q. NOW HAS ARISTA'S COPYING OF CISCO'S CLI AND USER
11:47:35 13 INTERFACES FEATURES AND MANUALS AND ALL OF THAT CAUSED CISCO
11:47:39 14 ANY HARM?

11:47:39 15 A. PRETTY DRAMATIC HARM.

11:47:41 16 Q. JUST BRIEFLY, BECAUSE WE JUST HEARD FROM A DAMAGES EXPERT,
11:47:45 17 I'M NOT ASKING YOU TO QUANTIFY IT, BUT JUST BRIEFLY, WHAT KIND
11:47:49 18 OF HARM HAS ARISTA'S COPYING HARMED CISCO?

11:47:51 19 A. SO I TEND TO THINK OF IT AS A SALES GUY, BECAUSE I'M A
11:47:53 20 SALES GUY AT HEART.

11:47:55 21 WHAT IT ALLOWED THEM TO DO WAS TO GET INTO ACCOUNTS
11:47:58 22 EARLIER THAN THEY WOULD HAVE BEEN ABLE TO OTHERWISE. THEY WERE
11:48:01 23 ABLE TO GO IN AND SAY, I'M NOT JUST CISCO-LIKE, LITERALLY YOU
11:48:04 24 CAN DROP IN THE PRODUCTS, AND IT'S CISCO, AS IT TURNED OUT.

11:48:07 25 AND IT ALLOWED THEM MUCH QUICKER ACCESS IN TERMS OF TIME

11:48:10 1 TO MARKET. AND IT HURT OUR IMAGE IN TERMS OF PEOPLE SAYING,
11:48:15 2 WAIT A MINUTE, THIS COMPANY IS INNOVATIVE AND THEY ARE ACTUALLY
11:48:18 3 MOVING FASTER THAN YOU ARE FROM FROM THAT PERSPECTIVE.

11:48:20 4 AND IT IMPACTED PROBABLY OUR REVENUES AND SERVICES IN A
11:48:25 5 BIG WAY IN MANY OF THE LARGE ACCOUNTS.

11:48:26 6 Q. AND YOUR PRICES AS WELL?

11:48:29 7 A. WHEN SOMEBODY GETS TO MARKET A LITTLE BIT QUICKER THAN YOU
11:48:33 8 DO WITH THE CATEGORY, AND IN MY OPINION TAKES WHAT WE HAD
11:48:40 9 INVESTED WHICH WAS A HUGE AMOUNT, TO GAIN A COMPETITIVE
11:48:43 10 ADVANTAGE, YOU THEN HAVE TO COMPETE MORE ON PRICE THAN YOU
11:48:43 11 WOULD OTHERWISE. THE MARGINS WERE GOOD, THE OTHER COMPANIES
11:48:48 12 WERE GOOD, BUT THEY WOULD HAVE DONE A LOT BETTER WITHOUT THIS,
11:48:48 13 FOR US.

11:48:51 14 Q. THANK YOU, MR. CHAMBERS.

11:48:52 15 MR. DESMARAI: NO FURTHER QUESTIONS, YOUR HONOR.

11:48:54 16 THE COURT: THANK YOU, SIR.

11:48:55 17 CROSS-EXAMINATION?

11:49:03 18 MR. VAN NEST: WE'VE GOT SOME BINDERS, YOUR HONOR.

11:49:05 19 THE COURT: OKAY. I'VE COME TO LOOK FORWARD TO IT.

11:49:23 20 MR. VAN NEST: MAY I PROCEED, YOUR HONOR?

11:49:25 21 THE COURT: YES PLEASE.

11:49:27 22 **CROSS-EXAMINATION**

11:49:28 23 BY MR. VAN NEST:

11:49:28 24 Q. GOOD MORNING MR. CHAMBERS.

11:49:29 25 A. GOOD MORNING, MR. VAN NEST.

11:49:30 1 Q. EARLIER IN THIS LAWSUIT YOU FILED A DECLARATION WITH THE
11:49:33 2 COURT CLAIMING TO HAVE NO UNIQUE INFORMATION ABOUT THE CASE;
11:49:37 3 RIGHT?

11:49:37 4 A. I'M SORRY, UNIQUE IN TERMS, CAN YOU CLARIFY A LITTLE BIT
11:49:44 5 FURTHER.

11:49:44 6 Q. YOU FILED A WRITTEN DECLARATION WITH THE COURT CLAIMING TO
11:49:48 7 HAVE NO UNIQUE INFORMATION RELEVANT TO THE CASE THAT COULD NOT
11:49:54 8 BE OBTAINED BY OTHER CISCO EMPLOYEES; RIGHT?

11:49:57 9 A. I THINK THE ANSWER WOULD BE PROBABLY, I'M NOT SURE OF ALL
11:50:04 10 OF IMPLICATIONS OF WHAT YOU ARE ASKING ME ON IT.

11:50:06 11 Q. AND IN THAT DECLARATION, YOU TOLD THE COURT UNDER OATH
11:50:12 12 THAT "YOUR KNOWLEDGE OF THE DETAILS OF THIS LAWSUIT IS LIMITED
11:50:16 13 TO COMMUNICATIONS THAT I HAVE HAD WITH COUNSEL FOR CISCO;"
11:50:21 14 RIGHT? THAT'S WHAT YOU SAID UNDER OATH?

11:50:23 15 A. IN TERMS OF THE DETAILS OF THE LAWSUIT AND CERTAIN
11:50:27 16 CATEGORIES, YES.

11:50:28 17 THERE ARE OBVIOUSLY THINGS THAT IN THE MARKET YOU HAVE IN
11:50:31 18 TERMS OF EXPERIENCE WITH CUSTOMERS, ET CETERA.

11:50:34 19 Q. BUT YOU SIGNED A DECLARATION, IN FACT, MR. CHAMBERS, THAT
11:50:38 20 SAID YOUR KNOWLEDGE OF THE DETAILS OF THIS LAWSUIT IS LIMITED
11:50:42 21 TO COMMUNICATIONS YOU HAD WITH COUNSEL FOR CISCO; RIGHT? YOU
11:50:46 22 SAID THAT?

11:50:47 23 A. WHATEVER IS IN THE DECLARATION, I WOULD STAND BY, YES.

11:50:51 24 Q. OKAY. AND THEN YOU TESTIFIED THAT ALL YOU KNOW ABOUT WHAT
11:50:56 25 CISCO IS CLAIMING IN THIS CASE IS ENTIRELY BASED ON WHAT YOUR

11:51:01 1 LAWYERS TOLD YOU; RIGHT?

11:51:02 2 A. I'M NOT SURE HOW TO ANSWER THAT. IN TERMS OF WHAT I HEAR
11:51:13 3 FROM CUSTOMERS?

11:51:14 4 Q. DO YOU DENY SAYING THAT, MR. CHAMBERS?

11:51:17 5 A. IF IT'S IN THE DECLARATION, I VERY MUCH STICK BY IT.

11:51:20 6 MR. VAN NEST: YOUR HONOR, I WOULD LIKE TO PLAY FROM
11:51:23 7 MR. CHAMBERS'S DEPOSITION AT THIS POINT, PAGE 46, LINE 25
11:51:26 8 THROUGH PAGE 47, LINE 8.

11:51:28 9 THE COURT: GO AHEAD.

11:51:29 10 MR. VAN NEST: PLEASE PLAY THE CLIP.

11:51:31 11 **(THE VIDEO DEPOSITION OF JOHN CHAMBERS WAS PLAYED INTO THE**
11:52:04 12 **RECORD.)**

11:52:04 13 Q. YOU STAND BY THAT TESTIMONY, MR. CHAMBERS?

11:52:07 14 A. YES, ESPECIALLY THE SECOND PART WHERE WHEN YOU TALKED
11:52:10 15 ABOUT IT AND I DIDN'T UNDERSTAND THE FRAMING OF THE QUESTION.

11:52:12 16 IN TERMS OF UNDERSTANDING THAT THERE HAD BEEN DELIBERATE
11:52:18 17 THEFT OF CLI CAPABILITIES FROM CISCO, OUR COMMANDS, OUR, IF YOU
11:52:23 18 WILL, OUR MANUALS, OUR HIERARCHIES, OUR USER INTERFACES,
11:52:28 19 ET CETERA, HELP INTERFACES, THAT I LEARNED FROM THE COUNSELS
11:52:32 20 AND THE OTHER DIRECTIONS, AND SO THE MATERIAL THAT I QUOTED IN
11:52:36 21 THAT SECOND PART WAS PRETTY MUCH ACCURATE.

11:52:38 22 Q. OKAY. AND ALL THAT YOU GOT TALKING WITH YOUR LAWYERS;
11:52:41 23 RIGHT?

11:52:41 24 A. ALL THE MATERIAL IN TERMS OF KNOWING THAT THERE WAS
11:52:44 25 VIOLATIONS FROM THE CLI PERSPECTIVE, ET CETERA, YES.

11:52:47 1 Q. OKAY. NOW MR. CHAMBERS, THERE'S A MARKET TRANSITION UNDER
11:52:51 2 WAY IN NETWORKING FROM A MORE TRADITIONAL NETWORKING TO WHAT
11:52:57 3 YOU CALL SOFTWARE DEFINED NETWORKING; RIGHT?

11:52:59 4 A. THAT IS CORRECT.

11:53:00 5 Q. AND YOU CONSIDER THAT TRANSITION TO BE A VERY IMPORTANT
11:53:02 6 TRANSITION IN NETWORKING; ISN'T THAT THE CASE?

11:53:05 7 A. IT'S A VERY IMPORTANT ONE, YES.

11:53:07 8 Q. AND CERTAINLY THIS TRANSITION TO SOFTWARE DEFINED
11:53:10 9 NETWORKING IS VERY IMPORTANT TO CISCO; RIGHT?

11:53:14 10 A. THE TRANSITION WITH THAT AND APPLICATIONS OF THE
11:53:19 11 INFRASTRUCTURE COMBINED, YES, IT IS.

11:53:20 12 Q. AND YOU STATED PUBLICLY THAT CISCO WAITED TOO LONG TO
11:53:24 13 ADDRESS THIS TRANSITION IN THE MARKET; RIGHT?

11:53:26 14 A. THAT IS TRUE.

11:53:27 15 Q. AND THAT CISCO WAS TOO SLOW TO RECOGNIZE THAT A
11:53:34 16 TRANSITION, A MAJOR TRANSITION WAS COMING TO THE MARKET IN
11:53:37 17 CONNECTION WITH SOFTWARE DEFINED NETWORKING, CORRECT?

11:53:40 18 A. I WOULD HAVE TO LOOK AT THE CONTEXT THAT I SAID THAT IN,
11:53:44 19 BUT THAT CONCEPT WOULD PROBABLY BE SOMETHING I WOULD NOT
11:53:47 20 DISAGREE WITH.

11:53:49 21 Q. OKAY. AND IN FACT, YOU COMPARED THIS TRANSITION AT THIS
11:53:52 22 TIME BEGINNING OF VOICEOVER INTERNET OR USING VIDEO OVER THE
11:53:54 23 INTERNET, BIG TRANSITIONS; RIGHT?

11:53:56 24 A. THAT'S FAIR.

11:53:57 25 Q. AND YOU VIEWED ARISTA AS A VERY STRONG COMPETITOR IN THIS

11:54:03 1 SOFTWARE DEFINED NETWORK MARKET; RIGHT?

11:54:05 2 A. ONE OF MULTIPLE COMPETITORS IN THIS MARKET, YES.

11:54:07 3 Q. AND I THINK YOU DESCRIBED IN YOUR DIRECT EXAMINATION

11:54:11 4 ARISTA IS A GOOD COMPETITOR, A TOUGH COMPETITOR; RIGHT?

11:54:14 5 A. THAT'S CORRECT.

11:54:15 6 Q. AND CERTAINLY THEY WERE ON YOUR RADAR, ARISTA, BY LATE

11:54:19 7 2010, CORRECT?

11:54:20 8 A. THAT WOULD BE PROBABLY PRETTY ACCURATE, THAT'S WHEN THEY

11:54:25 9 BROUGHT IN THE NEW HIGH END SWITCH, AND THE TRULY -- IT WAS

11:54:30 10 2011 WHERE WE BEGAN TO SEE THEM MORE IN THE DATA CENTER

11:54:33 11 RESOLVE.

11:54:33 12 Q. AND YEAH. AND IN LATE 2010, ONE OF THE LEADING INDUSTRY

11:54:39 13 PUBLICATIONS FOUND THAT ARISTA OUTPERFORMED CISCO IN

11:54:45 14 HEAD-TO-HEAD COMPETITION IN TESTING THEY HAD DONE; RIGHT?

11:54:51 15 A. AND WHAT WAS THE DATE AGAIN, SIR?

11:54:53 16 Q. 2010.

11:54:56 17 A. I WOULD HAVE TO SEE THE DATA. IF YOU ARE TALKING ABOUT A

11:54:59 18 LOW END LATENCY PINPOINT PRODUCT, THAT MAY BE ACCURATE. THERE

11:55:05 19 PROBABLY, DEPENDING ON WHAT TYPE OF ANALYSIS YOU ARE DOING WHEN

11:55:08 20 YOU DO COMPUTER TESTING, IT DEPENDS ON YOUR APPLICATIONS, WHICH

11:55:12 21 INDUSTRY YOU ARE GOING WITH, ET CETERA.

11:55:15 22 SO I COULDN'T RESPOND TO A GENERAL ONE. I WOULD SAY IF

11:55:18 23 YOU ARE TALKING LOW LATENCY FOR A PRODUCT, THE ARISTA HAD SOME

11:55:21 24 ADVANTAGES IN THAT AREA.

11:55:22 25 Q. LET'S LOOK AT DOCUMENT -- EXHIBIT NUMBER 5416. IT'S IN

11:55:27 1 ONE OF THOSE BINDERS WE HANDED YOU, MR. CHAMBERS.

11:55:29 2 A. OKAY. THANK YOU.

11:55:30 3 Q. 5416. DO YOU HAVE IT THERE BEFORE YOU?

11:55:36 4 A. YES, I DO.

11:55:38 5 Q. DO YOU RECOGNIZE IT AS AN ARTICLE BY *NETWORK WORLD* IN
11:55:43 6 EARLY 2010, JANUARY?

11:55:46 7 A. JUST GIVE ME A SECOND. JANUARY 18, 2010, AND IT IS
11:55:52 8 *NETWORK WORLD*, YES.

11:55:54 9 Q. AND THAT'S A PUBLICATION, SOMETIMES YOU GIVE INTERVIEWS TO
11:55:57 10 THAT COVER THE NETWORKING FIELD?

11:55:59 11 A. THAT IS CORRECT.

11:56:00 12 Q. YOU REVIEW THAT FROM TIME TO TIME?

11:56:02 13 A. THAT IS CORRECT.

11:56:03 14 Q. DO YOU RECALL LEARNING IN 2010 THAT CISCO HAD BEATEN --
11:56:07 15 EXCUSE ME, ARISTA HAD BEATEN CISCO IN A HEAD-TO-HEAD TEST
11:56:11 16 PUBLISHED HERE BY *NETWORK WORLD*?

11:56:12 17 A. I DON'T KNOW THAT IF I WOULD RECALL THE SPECIFICS ON THAT.
11:56:16 18 YOU FACE VARIOUS COMPETITORS, SOMETIMES WE WIN, SOMETIMES WE
11:56:22 19 WOULD NOT, IN KEY TECHNOLOGY AREAS. IF THEY BEAT US IN THE
11:56:24 20 TEST AND THAT'S WHAT I SAID HERE, THEN THAT'S WHAT I ACCEPT AS
11:56:28 21 A FACT.

11:56:28 22 MR. VAN NEST: YOUR HONOR, I WOULD OFFER 5416 IN
11:56:30 23 EVIDENCE.

11:56:30 24 THE COURT: IS THERE ANY OBJECTION?

11:56:32 25 MR. DESMARAIS: NO, YOUR HONOR.

11:56:32 1 THE COURT: IT WILL BE ADMITTED.

11:56:35 2 (DEFENDANT'S EXHIBIT 5416 WAS ADMITTED INTO EVIDENCE.)

11:56:35 3 BY MR. VAN NEST:

11:56:35 4 Q. THIS IS THE *NETWORK WORLD* ARTICLE, AND AGAIN *NETWORK WORLD*
11:56:38 5 COVERS THE NETWORKING BUSINESS, MR. CHAMBERS?

11:56:42 6 A. YES, IT DOES.

11:56:43 7 Q. AND RIGHT THERE, THIS IS AN ARTICLE IN JANUARY OF 2010,
11:56:47 8 CORRECT, WE HAVE THAT DATE RIGHT UNDER THE HEADER?

11:56:49 9 A. YES, WE DO, UH-HUH.

11:56:51 10 Q. AND LET'S BLOW UP THAT FIRST PARAGRAPH.

11:56:56 11 "AS DATA CENTER MANAGERS CONSOLIDATE AND VIRTUALIZE THEIR
11:57:01 12 SERVERS, THE NEXT ORDER OF BUSINESS BECOMES MOVING ALL THAT
11:57:05 13 TRAFFIC. ENTER TOP OF RACK DATA CENTER SWITCHES THAT OFFER
11:57:08 14 SPEED, SCALEABILITY, REDUNDANCY, VIRTUALIZATION, SUPPORT AND
11:57:13 15 OTHER FEATURES NOT AVAILABLE IN GARDEN VARIETY ETHERNET
11:57:16 16 SWITCHES."

11:57:18 17 THEY ARE TALKING ABOUT THIS TRANSITION TO SOFTWARE DEFINED
11:57:21 18 NETWORKING IN THE CLOUD; RIGHT?

11:57:23 19 A. I WOULD ASSUME THAT IS LOGICAL THERE, I HAVEN'T READ THE
11:57:29 20 ARTICLE, OR AT LEAST I HAVEN'T READ IT RECENTLY, IF I HAVE EVER
11:57:33 21 READ IT. SO I'M JUST, BASED UPON YOUR COMMENTS, THE ONE
11:57:36 22 PARAGRAPH HERE, YES.

11:57:38 23 Q. AND -- OKAY.

11:57:38 24 AND THE NEXT PARAGRAPH DOWN TALKS ABOUT A TEST OF 24, THIS
11:57:43 25 IS THE -- THIS TEST ANALYZES SWITCHES, THERE WE GO. AT LEAST

11:57:48 1 2410 GIGABIT INTERFACES FROM ARISTA, BLADE, CISCO, DELL, AND
11:57:54 2 OTHERS; RIGHT?

11:57:55 3 A. THAT IS CORRECT.

11:57:56 4 Q. AND THEY CLAIM THEY COMPARED THESE IN TEN DIFFERENT WAYS
11:57:59 5 AND SUBJECTED THEM TO MONTHS OF GRUELLING PERFORMANCE TESTS;
11:58:05 6 RIGHT?

11:58:05 7 A. YES, IT DOES.

11:58:06 8 Q. AND THEN THEIR CONCLUSION WAS, "WITH THE BEST COMBINATION
11:58:10 9 OF FEATURES AND PERFORMANCE" -- EXCUSE ME.

11:58:14 10 "WHILE EACH OFFERED SOME STANDOUT QUALITIES, WE'RE
11:58:17 11 SINGLING OUT ARISTA'S DCS-7124 AND BLADE'S G8124 AS TOP PICKS.
11:58:27 12 WITH THE BEST COMBINATION OF FEATURES AND PERFORMANCE,
11:58:29 13 ESPECIALLY IN THE AREAS OF LATENCY AND JITTER, BOTH SWITCHES
11:58:33 14 EARN CLEAR CHOICE AWARDS."

11:58:35 15 DO YOU SEE THAT?

11:58:35 16 A. YES, I DO.

11:58:36 17 Q. IS THIS THE TYPE OF THING THAT YOUR STAFF WOULD BRING TO
11:58:39 18 YOUR ATTENTION FROM TIME TO TIME, MR. CHAMBERS?

11:58:42 19 A. PERHAPS FROM TIME TO TIME.

11:58:44 20 AGAIN, I WOULD VIEW IT AS MY EARLIER COMMENTS, I WOULD
11:58:47 21 VIEW THIS AS A PINPOINT PRODUCT A GOOD COMPETITOR IN LOW
11:58:51 22 LATENCY. SO YES, THIS IS A GOOD PRODUCT.

11:58:53 23 Q. AND BY 2011 YOU WERE ACTUALLY SEEING A LOT ABOUT ARISTA IN
11:58:58 24 THE VERY SPECIFIC CUSTOMER BRIEFINGS YOU RECEIVED BEFORE
11:59:01 25 CUSTOMER MEETINGS; IS THAT RIGHT?

11:59:03 1 A. YEAH. THEY WERE MAKING THE RADAR SCREEN PRETTY GOOD.
11:59:06 2 EACH TIME YOU GO INTO CUSTOMERS, YOU TALK TO WHAT IS WORKING
11:59:09 3 FOR US AND WHAT WE HAVE TO DO BETTER. YOU ALSO SAY WHO ARE THE
11:59:13 4 KEY COMPETITORS, AND THEY WERE ONE OF THE COMPETITORS. 2011
11:59:16 5 WAS PROBABLY THE FIRST TIME I BEGAN TO SEE THEM ON A LARGER
11:59:19 6 SCALE.

11:59:20 7 Q. AND FROM TIME TO TIME BACK WHEN YOU WERE CEO, YOU ACTUALLY
11:59:23 8 DID VISIT CUSTOMERS AND TALK WITH CUSTOMER; RIGHT?

11:59:25 9 A. ALL THE TIME.

11:59:26 10 Q. ESPECIALLY THE BIG CUSTOMERS?

11:59:27 11 A. BIG AND SMALL, YES.

11:59:29 12 Q. AND SO IF ONE OF YOUR TOP SALES FOLKS THOUGHT THEY WERE IN
11:59:34 13 TROUBLE OR CONCERNED OR WORRIED, THAT MIGHT BE AN OCCASION TO
11:59:37 14 BRING MR. CHAMBERS IN TO TALK WITH THE CUSTOMER; RIGHT?

11:59:39 15 A. I MET WITH THE CUSTOMERS ON A REGULAR BASIS, BOTH
11:59:45 16 CUSTOMERS THAT WE WERE WINNING IN AND CUSTOMERS WHERE WE HAD
11:59:47 17 GOOD COMPETITORS IN, SO YES.

11:59:49 18 Q. WOULD YOU OPEN YOUR BINDER UP MR. CHAMBERS TO 5495. DO
12:00:06 19 YOU HAVE IT THERE, MR. CHAMBERS? AND I'M GOING TO SHOW IT ON
12:00:08 20 THE SCREEN, EITHER WAY.

12:00:09 21 THIS IS THE TYPE OF BRIEFING THAT YOU RECEIVED
12:00:10 22 PERIODICALLY BEFORE CUSTOMER MEETINGS; RIGHT?

12:00:12 23 A. YES, I GET PROBABLY TEN OF THESE A DAY ON A VARIOUS DAY
12:00:18 24 OUT IN THE FIELD, SO IT WAS VERY CLASSIC IN TERMS OF THE
12:00:21 25 FORMAT.

12:00:21 1 Q. AND THIS IS THE FORMAT YOU ARE USED TO SEEING AND THE
12:00:24 2 FORMAT YOU WOULD REVIEW ON THE WAY TO SEEING THE CUSTOMER?

12:00:24 3 A. YES, SIR.

12:00:27 4 Q. AND THIS CUSTOMER IS MICROSOFT?

12:00:28 5 A. YES, IT IS.

12:00:29 6 Q. THAT'S A BIG CUSTOMER?

12:00:30 7 A. YES, IT IS. BIG CUSTOMER, KEVIN TURNER, VERY IMPORTANT
12:00:33 8 GUY.

12:00:33 9 Q. OKAY. AND THE DATE OF THIS IS MARCH OF 2011; RIGHT?

12:00:35 10 A. THAT IS CORRECT.

12:00:36 11 Q. AND IF WE GO DOWN TO THE BOTTOM, THERE'S A CATEGORY "JOHN
12:00:40 12 AND CISCO'S OBJECTIVES," DO YOU SEE THAT?

12:00:42 13 A. I DO.

12:00:43 14 Q. AND THE OBJECTIVE THERE, THE VERY FIRST OBJECTIVE WAS TO
12:00:48 15 BLOCK ARISTA FROM GAINING A FIRST PRODUCTION DEPLOYMENT AT
12:00:53 16 MICROSOFT IN WHAT IS CALLED THE "SPINE" A STRATEGIC NETWORK
12:00:58 17 LAYER IN THE MEGASCALE DATA CENTER; DO YOU SEE THAT?

12:01:01 18 A. I DO.

12:01:02 19 Q. AND THAT WAS YOUR STAFF TELLING YOU THAT WAS AT LEAST ONE
12:01:06 20 OF THE OBJECTIVES OF YOUR MEETING, THAT'S THE PURPOSE FOR THAT?

12:01:10 21 A. THAT WOULD PROBABLY BE THE FIELD TELLING US THAT. WHAT
12:01:13 22 THEY DO IS TELL YOU, HERE'S WHAT WE WOULD LIKE TO DO IN THE
12:01:16 23 MEETINGS, AND WHO WOULD BE THERE. IT DOESN'T MEAN I
12:01:20 24 NECESSARILY DID WHAT THEY ASKED ME TO.

12:01:21 25 Q. SURE. YOU'RE THE BOSS, RIGHT? YOU COULD DO WHAT YOU

12:01:24 1

WANT.

12:01:24 2

A. MOST OF THE TIME.

12:01:25 3

Q. GOING A LITTLE FURTHER DOWN, THERE WAS SPECIFIC DISCUSSION

12:01:28 4

HERE ABOUT AN AWARD, "A POSSIBLE AWARD, MICROSOFT SEARCH, IT'S

12:01:34 5

RIGHT THERE AT THE BOTTOM OF THAT FIRST PAGE, MICROSOFT SEARCH

12:01:38 6

IS ON THE VERGE OF DEPLOYING A \$2 MILLION INVESTMENT WITH

12:01:42 7

ARISTA WHICH WOULD REPRESENT A SIGNIFICANT BEACHHEAD."

12:01:45 8

AND HE GOES ON TO DESCRIBE HOW BIG THE MICROSOFT SALES

12:01:50 9

OPPORTUNITY IS FOR CISCO, \$100 MILLION ANNUAL FRANCHISE; DO YOU

12:01:55 10

SEE THAT.

12:01:55 11

A. YES, I DO.

12:01:56 12

Q. NOW YOUR STAFF ALSO INCLUDES YOU IN ON WHAT THEY THOUGHT

12:02:02 13

WAS HAPPENING IN THIS COMPETITION BETWEEN CISCO AND ARISTA;

12:02:06 14

RIGHT?

12:02:06 15

A. THAT IS THEIR PERSPECTIVE, YES.

12:02:09 16

Q. OKAY. LET'S GO TO THE NEXT BULLET, TOP OF THE NEXT PAGE.

12:02:13 17

AND I WILL SHOW IT ON THE SCREEN, MR. CHAMBERS, FOR YOU.

12:02:16 18

THIS IS YOUR STAFF TALKING TO YOU, AND THEY SAID "ARISTA

12:02:18 19

IS OUT PERFORMING CISCO ON PRICE, PRODUCT, ROAD MAP AND

12:02:26 20

VISION."

12:02:26 21

RIGHT? THAT'S WHAT YOUR STAFF IS TELLING YOU IN 2011,

12:02:31 22

CORRECT?

12:02:31 23

A. AGAIN, I'M NOT DRAWING A DISTINCTION OTHER THAN IT'S THE

12:02:36 24

SALES TEAM WHO WRITES THIS UP. SO IT'S THE LOCAL SALES TEAM

12:02:39 25

SAYING THIS, THAT IS CORRECT.

12:02:40 1 Q. OKAY. AND THEY'RE IDENTIFYING PRICE, PRODUCT, ROAD MAP,
12:02:45 2 AND VISION AS THE THINGS IN WHICH ARISTA IS AHEAD OF CISCO AT
12:02:50 3 THIS TIME; RIGHT?

12:02:50 4 A. THAT IS THEIR PERSPECTIVE, YES.

12:02:51 5 Q. THAT PRETTY MUCH COVERS THE WATERFRONT, DOESN'T IT?

12:02:55 6 A. IT COVERS A LOT OF AREAS; DO YOU WANT ME TO COMMENT IN
12:02:58 7 TERMS OF MY VIEW ON THIS OR --

12:03:00 8 Q. LET'S GO ON, MR. CHAMBERS.

12:03:01 9 YOU WILL GET A CHANCE WHEN MR. DESMARAIS GETS BACK UP TO
12:03:07 10 ANSWER WHATEVER QUESTIONS HE THINKS ARE LEFT.

12:03:09 11 I WANT TO GO TO THE NEXT SENTENCE BECAUSE IT SAYS, "BASED
12:03:12 12 ON MULTIPLE MISSED CISCO ROAD MAP COMMITMENTS IN THE DATA
12:03:16 13 CENTER, MICROSOFT FEEL LESS RISK WITH UNPROVEN ARISTA;" DO YOU
12:03:20 14 SEE THAT.

12:03:20 15 A. YES, I DO.

12:03:21 16 Q. NOW A MULTIPLE -- A ROAD MAP COMMITMENT IS A COMMITMENT BY
12:03:27 17 CISCO THAT WE ARE GOING TO HAVE A PRODUCT READY FOR YOU AT A
12:03:30 18 CERTAIN TIME; RIGHT?

12:03:30 19 A. YOU SHARE THAT WITH YOUR CUSTOMERS. MOST OF THE TIMES,
12:03:33 20 YOU HIT IT, SOMETIMES YOU DON'T.

12:03:35 21 Q. AND THAT'S WHAT THAT MEANS. IN OTHER WORDS, THE ROAD MAP
12:03:38 22 COMMITMENT MEANS I'M GOING TO HAVE A PRODUCT READY FOR YOU IN A
12:03:41 23 CERTAIN TIME OR IN A CERTAIN RANGE; RIGHT?

12:03:43 24 A. THAT'S WHAT THE ROAD MAP IS ALL ABOUT. THAT IS CORRECT.

12:03:45 25 Q. AND YOU WERE BEING TOLD BY YOUR STAFF THAT CISCO HAD

12:03:48 1 ALREADY MISSED MULTIPLE ROAD MAP COMMITMENTS, AND THAT'S WHY
12:03:53 2 MICROSOFT WAS ABOUT TO AWARD BUSINESS TO ARISTA.

12:03:56 3 THAT'S WHAT YOU UNDERSTOOD; RIGHT?

12:03:57 4 A. THAT'S WHAT THE FIELD TEAM WOULD SAY ON THIS, CORRECT.

12:04:03 5 MR. VAN NEST: YOUR HONOR, I'M ABOUT TO GO ON TO
12:04:05 6 ANOTHER DOCUMENT.

12:04:06 7 THE COURT: THIS WOULD BE A GOOD TIME TO STOP THEN.
12:04:06 8 ALL RIGHT. WE WILL RETURN AFTER LUNCH.

12:04:11 9 LADIES AND GENTLEMEN, LET'S COME BACK AT 1:05.

12:04:21 10 (RECESS FROM 12:04 P.M. UNTIL 1:05 P.M.)

01:06:48 11 (JURY OUT AT 1:06 P.M.)

01:06:48 12 THE COURT: GOOD AFTERNOON, EVERYONE. PLEASE BE
01:06:50 13 SEATED. WE ARE ON THE OUTSIDE THE PRESENCE OF THE JURY.

01:06:54 14 MR. VAN NEST, YOU HAD AN ISSUE?

01:06:55 15 MR. VAN NEST: YES. WE DO, YOUR HONOR.

01:06:57 16 WE HAVE TWO ISSUES. ONE THAT REQUIRES A WARNING, I THINK,
01:07:00 17 AND THE OTHER THAT REQUIRES STRIKING SOME TESTIMONY.

01:07:03 18 THIS MORNING MR. DESMARAIS ELICITED AGAIN, IN VIOLATION OF
01:07:06 19 THE MOTION IN LIMINE, TESTIMONY ABOUT PATENTS IN PLURAL, AND HE
01:07:12 20 WENT BEYOND THAT TO HAVE MR. CHAMBERS TESTIFY THAT ALL THE
01:07:16 21 INVENTORS WERE PEOPLE FORMERLY AT CISCO, AND NOW AT ARISTA, AND
01:07:20 22 SO THEY KNOW ABOUT OUR TECHNOLOGY.

01:07:22 23 THAT TESTIMONY WAS GIVEN TOWARDS THE END OF HIS DIRECT
01:07:27 24 EXAMINATION, AND SUPPOSEDLY JUSTIFYING A LAWSUIT.

01:07:33 25 OBVIOUSLY, YOU'VE RULED OUT THE ITC. I DIDN'T WANT TO GET

01:07:36 1 UP AND MAKE A BIG DEAL ABOUT THAT IN FRONT OF THE JURY, AND I
01:07:40 2 DON'T THINK I SHOULD BE REQUIRED TO, IT WAS COMPLETELY
01:07:43 3 IMPROPER, AND PARTICULARLY TO HAVE MR. CHAMBERS STATE THAT
01:07:46 4 THESE PEOPLE KNOW THE TECHNOLOGY IN OUR PATENTS BECAUSE THEY
01:07:48 5 WERE AT CISCO.

01:07:49 6 THE ONE PATENT REMAINING IN THIS CASE HAS TWO INVENTOR,
01:07:55 7 NEITHER OF WHOM HAS EVER WORKED AT ARISTA, AND THEY KNOW THAT.

01:07:59 8 SO I WOULD JUST LIKE COUNSEL CAUTIONED OR INSTRUCTED THAT
01:08:02 9 THEY CAN'T GO ANYWHERE NEAR THIS ON REDIRECT WITH MR. CHAMBERS,
01:08:06 10 IT WAS IMPROPER TO DO SO IN THE FIRST PLACE.

01:08:08 11 THE SECOND ISSUE IS WE HEARD, NEAR THE END OF
01:08:12 12 MR. CHAMBERS'S TESTIMONY, TESTIMONY ABOUT A LICENSE TO THE CLI
01:08:17 13 BETWEEN CISCO AND DEC. WELL, WE ASKED A SPECIFIC 30(B)(6)
01:08:22 14 QUESTION ABOUT THE EXISTENCE OF NEGOTIATION CONTENTS OR TERMS
01:08:28 15 OF ANY LICENSES TO THE CLI BETWEEN CISCO AND ANY THIRD PARTY.
01:08:34 16 THEY DESIGNATED MR. LANG ON THAT ISSUE, AND HE TESTIFIED, "HAS
01:08:41 17 CISCO EVER ENTERED INTO A LICENSE AGREEMENT SPECIFICALLY
01:08:45 18 GRANTING THE RIGHTS TO ITS CLI OR ANY PORTION OF ITS CLI?"

01:08:50 19 ANSWER, "I DON'T KNOW OF ANY."

01:08:52 20 WE ASKED FOR ANY AND ALL LICENSES TO THE CLI IN DISCOVERY,
01:08:55 21 AND THE DEC LICENSE THAT MR. CHAMBERS TALKED ABOUT WAS NOT
01:08:58 22 PRODUCED.

01:08:59 23 I HAVEN'T FOUND ANY EVIDENCE OF IT IN THE PRODUCTION
01:09:02 24 FILES.

01:09:03 25 SO I WOULD ASK THE COURT TO INSTRUCT THE JURY AFTER THE

01:09:06 1 LUNCH BREAK THAT TESTIMONY THAT MR. CHAMBERS'S GAVE ON HIS
01:09:10 2 DIRECT EXAMINATION, NOT MINE, BUT ON HIS DIRECT ABOUT THE DEC
01:09:16 3 LICENSE SHOULD BE STRICKEN AND DISREGARDED, OR WILL BE STRICKEN
01:09:20 4 AND SHOULD BE DISREGARDED.

01:09:22 5 THE COURT: MR. NELSON, ARE YOU GOING TO PICK UP ON
01:09:24 6 THAT SINCE YOU HANDLED THE DISCOVERY?

01:09:27 7 MR. NELSON: YEAH, I DIDN'T PERSONALLY, BUT I KNOW
01:09:30 8 THE ISSUE.

01:09:30 9 DO YOU WANT ME TO ADDRESS THE SECOND ONE FIRST? I THINK
01:09:33 10 THE FIRST ONE IS HE JUST DOESN'T WANT US TO GO BACK INTO THE
01:09:36 11 PATENTS, AND THAT'S NOT REALLY WHAT THE QUESTION ELICITED.

01:09:39 12 AND MR. GIANCARLO ACTUALLY BROUGHT THAT UP IN
01:09:42 13 CROSS-EXAMINATION.

01:09:42 14 THE COURT: SO WE ARE JUST NOT GOING DOWN THE ROAD OF
01:09:46 15 DISCUSSING THE OTHER PATENTS THAT CISCO HAS AND ARISTA'S
01:09:53 16 KNOWLEDGE OF THEM. THAT'S BEEN STRICKEN AS TO THE ITC, BUT I
01:09:57 17 JUST DON'T EVEN WANT TO GET NEAR THAT, IT'S SIMPLY NOT
01:10:00 18 RELEVANT.

01:10:01 19 MR. NELSON: NO. UNDERSTOOD, YOUR HONOR.

01:10:02 20 THE COURT: THAT'S THE WARNING, MR. VAN NEST. I
01:10:04 21 CONCUR, YOU UNDERSTAND THAT.

01:10:06 22 MR. VAN NEST: THANK YOU, YOUR HONOR.

01:10:06 23 MR. NELSON: HE'S NOT GOING BACK THERE.

01:10:08 24 ON THE OTHER THING, MY UNDERSTANDING YOUR HONOR, IT'S NOT
01:10:10 25 A LICENSE TO THE CLI, THERE WAS A JOINT DEVELOPMENT AGREEMENT

01:10:13 1 WITH DEC. IT'S NOT A LICENSE TO THE CLI.

01:10:16 2 AND WHERE THIS CAME UP, ACTUALLY --

01:10:20 3 THE COURT: I DON'T THINK MR. CHAMBERS ACTUALLY
01:10:22 4 TESTIFIED IT WAS A LICENSE. I DON'T RECALL THAT HE USED THAT
01:10:24 5 WORD.

01:10:25 6 MR. VAN NEST: HE CERTAINLY REFERENCED THE CLI AND
01:10:27 7 THE TESTIMONY WAS CRYSTAL CLEAR, CRYSTAL CLEAR THAT THIS GAVE
01:10:31 8 DEC PERMISSION TO USE THE CLI.

01:10:33 9 SO WHATEVER WORDS HE USED, IT WAS CALCULATED TO LEAVE THE
01:10:37 10 IMPRESSION THAT THEY HAD GIVEN SOMEBODY SPECIFIC PERMISSION TO
01:10:40 11 USE THE CLI AND WE DON'T HAVE THE LICENSE, AND THEY DENIED THAT
01:10:44 12 IN THEIR 30 (B) (6) .

01:10:46 13 MR. NELSON: OKAY. SO IT'S NOT A LICENSE TO THE CLI,
01:10:49 14 YOUR HONOR.

01:10:51 15 AND IF I COULD FINISH, BEFORE HE CUT ME OFF, THAT WHERE
01:10:54 16 THIS CAME UP, IS ON CROSS-EXAMINATION OF MR. LOUGHEED. YOU
01:11:00 17 WILL RECALL THEY PULLED OUT THE DEC MANUAL AND HE SAID HE
01:11:03 18 DIDN'T HAVE ANY IDEA WHAT THAT WAS BUT THAT THEY SHOWED HIM A
01:11:06 19 BUNCH OF QUESTIONS AND REPRESENTED THAT THOSE WERE COMMANDS,
01:11:10 20 SOME OF THE COMMANDS THAT OVERLAPPED, FROM A DEC PRODUCT.

01:11:13 21 THAT PRODUCT, AS PRESS RELEASES SHOW ALL OVER THE PLACE,
01:11:18 22 RUNS THE IOS; RIGHT, IT RUNS THE IOS BECAUSE IT WAS A JOINT
01:11:23 23 DEVELOPMENT PRODUCT. SO THOSE QUESTIONS HAD NO FOUNDATION,
01:11:26 24 WERE COMPLETELY IMPROPER.

01:11:28 25 AND IN FACT, IN THIS CASE, THEIR EXPERT DR. BLACK, HE HAD

01:11:31 1 ACCESS TO THAT MANUAL, NEVER ONCE SAID THESE COMMANDS PREDATED
01:11:36 2 CISCO.

01:11:37 3 SO THAT WAS THE PROBLEM WITH THAT. IT WAS COMPLETELY
01:11:39 4 IMPROPER QUESTIONING, IT HAD NEVER BEEN RAISED BEFORE IN THIS
01:11:44 5 CASE.

01:11:44 6 SO THE ONLY THING MR. CHAMBERS WAS SAYING WAS THAT WAS A
01:11:47 7 PRODUCT, NOT THAT IT WAS LICENSED UNDER THE CLI. IT'S NOT A
01:11:50 8 DISCOVERY ISSUE. SO THAT THERE CAN BE NO FURTHER INTIMATION
01:11:58 9 THAT SOMEHOW DEC HAD COMMANDS THAT PREDATED, THAT'S NEVER BEEN
01:12:02 10 A CONTENTION IN THE CASE.

01:12:03 11 AND IF WE CAN JUST REMOVE THAT FROM THE CASE, IT'S ALL --
01:12:06 12 EVERYTHING IS FINE. BUT THERE WAS NO -- IT ISN'T A LICENSE
01:12:10 13 AGREEMENT AND THERE WAS NO INTENTION TO IMPLY THAT IT WAS A
01:12:14 14 LICENSE AGREEMENT. AND IN FACT, I'M NOT EVEN SURE HOW THAT
01:12:18 15 WOULD BE IN MY INTEREST TO IMPLY THAT IT'S A LICENSE AGREEMENT.

01:12:22 16 MR. VAN NEST: LET ME SAY TWO THINGS.

01:12:23 17 MR. NELSON: I'M DONE NOW, BOB.

01:12:25 18 MR. VAN NEST: TWO THINGS.

01:12:26 19 ONE, THAT'S A MISCHARACTERIZATION OF WHAT WAS DONE WITH
01:12:30 20 MR. LOUGHEED, BECAUSE HE WAS ASKED SIMPLY WHEN HE ADOPTED
01:12:35 21 COMMANDS AT CISCO, WAS HE AWARE THAT SOME OF THOSE SAME
01:12:39 22 COMMANDS WERE IN A PRE-EXISTING DEC MANUAL. SO THAT'S WRONG.

01:12:43 23 BUT EVEN IF IT WERE RIGHT, THE SOLUTION TO IT ISN'T TO GET
01:12:46 24 UP TWO DAYS LATER AND PUT INTO EVIDENCE SOMETHING THAT
01:12:49 25 CONTRADICTS YOUR 30 (B) (6), AND DISCUSSED AN AGREEMENT, AND I

01:12:55 1 DON'T CARE WHAT WE CALL IT, THAT HAS NEVER BEEN PRODUCED, WHICH
01:12:59 2 WE EXPRESSLY ASKED FOR, WHICH WE HAVE EXPRESS TESTIMONY FROM
01:13:03 3 THE 30(B) (6) WITNESS DOES NOT EXIST.

01:13:06 4 I MEAN, THAT'S NOT PROPER, EVEN IF YOU WERE RIGHT ABOUT
01:13:11 5 MR. LOUGHEED, WHICH HE'S NOT, THAT DOESN'T JUSTIFY GETTING UP
01:13:16 6 NOW AND TELLING THE JURY THAT SOME KIND OF AGREEMENT TO THE CLI
01:13:19 7 THAT DEC HAS BACK IN THE 80'S.

01:13:22 8 THAT'S WRONG AND IMPROPER AND CONTRADICTS --

01:13:25 9 THE COURT: WELL, SO HERE'S THE PROBLEM, I'M EITHER
01:13:28 10 GOING TO HAVE TO STRIKE IT OR IT'S GOING TO HAVE TO COME BACK
01:13:30 11 AND BE EXPLAINED WHAT IT IS BECAUSE IT'S LEFT A MISIMPRESSION
01:13:34 12 WITH THE JURY.

01:13:35 13 MR. VAN NEST: I THINK, YOUR HONOR, WE SHOULD STRIKE
01:13:37 14 IT.

01:13:37 15 THE COURT: IT'S MUCH EASIER TO STRIKE IT THAN GO
01:13:39 16 BACK AND EXPLAIN IT.

01:13:40 17 MR. VAN NEST: THE EXPLAINING IT DOESN'T HELP ME
01:13:42 18 BECAUSE THAT MAKES THE HARM EVEN WORSE. I DON'T HAVE THE
01:13:45 19 AGREEMENT, IT'S NEVER BEEN PRODUCED, SO I DON'T HAVE ANYTHING
01:13:47 20 TO IMPEACH WITH.

01:13:49 21 THE COURT: I'M SURPRISED THAT THIS AGREEMENT WAS NOT
01:13:51 22 PRODUCED. IT'S HARD TO BELIEVE THAT. I UNDERSTAND IT'S NOT A
01:13:55 23 LICENSE.

01:13:55 24 MR. NELSON: RIGHT.

01:13:56 25 THE COURT: IF THERE'S A PARTNERSHIP, YOU KNOW, I

01:13:59 1 DON'T KNOW, YOU READ TO ME THE REQUEST. IT'S PROBABLY
01:14:03 2 TECHNICALLY NOT A LICENSE, AND JOINT DEVELOPMENT AGREEMENTS --
01:14:07 3 MR. NELSON: RIGHT.
01:14:08 4 MR. VAN NEST: NO, NO, WAIT A MINUTE, EXCUSE ME.
01:14:10 5 LICENSES, POTENTIAL LICENSES, ASSIGNMENTS OR OTHER IP RELATED
01:14:14 6 TRANSACTIONS, THAT'S WHAT I CALL A GOOD REQUEST.
01:14:20 7 THE COURT: WHOEVER WROTE THAT, NICE JOB.
01:14:27 8 MR. NELSON, I THINK WE ARE NOT GOING TO GO BACK AND
01:14:30 9 DESCRIBE THIS. IT SOUNDS LIKE THIS SHOULDN'T HAVE BEEN
01:14:36 10 PRODUCED. I DON'T THINK MR. VAN NEST SHOULD BE CONFRONTED WITH
01:14:39 11 THIS TESTIMONY ON AN IMPRESSION LEFT WITH THE JURY ON SOMETHING
01:14:44 12 THAT HE'S NEVER EVEN SEEN.
01:14:45 13 MR. NELSON: BUT HERE'S THE ONLY ISSUE WITH RESPECT
01:14:46 14 TO THAT, AND I UNDERSTAND DISCOVERY, THESE ARE BIG COMPANIES
01:14:49 15 AND BILLIONS OF PAGES HAVE BEEN PRODUCED. THIS DEC ISSUE, THIS
01:14:51 16 DEC MANUAL IS NEVER AN ISSUE. THEIR EXPERT HAD THAT, NEVER
01:14:56 17 ONCE RAISED THAT THESE WERE PRE-EXISTING COMMANDS, NEVER ONCE
01:15:00 18 RAISED THEY WERE PUBLISHED.
01:15:01 19 THIS WAS NEVER AN ISSUE IN THE CASE UNTIL THE IMPROPER
01:15:04 20 CROSS-EXAMINATION OF MR. LOUGHEED MAKING THE REPRESENTATION FOR
01:15:09 21 WHICH THERE WAS NO FOUNDATION, FOR WHICH THERE WAS ACTUALLY
01:15:14 22 CONTRARY, CONTRARY INFORMATION BASED UPON THE RECORD IN THE
01:15:17 23 CASE, WHERE THEIR EXPERT HAD THIS, AND HE DID SAY THAT THERE
01:15:21 24 WERE TWO OTHER PRE-EXISTING COMMANDS THAT HE FOUND. IF YOU
01:15:25 25 RECALL THERE WERE 508 IN THE CASE AND TWO OF THEM WERE DROPPED,

01:15:28 1 THAT'S WHY THEY WERE DROPPED, YOUR HONOR, I DON'T THINK IT'S A
01:15:31 2 BIG SECRET.

01:15:32 3 NEVER ONCE SAID THIS. AND THEN TO COME OUT IN
01:15:34 4 CROSS-EXAMINATION OF MR. LOUGHEED WHEN HE SAYS I DON'T
01:15:36 5 RECOGNIZE THIS, AND THEN TO REPRESENT IN THE QUESTIONS THAT
01:15:40 6 THESE ARE -- THESE ARE COMMANDS THAT DEC HAD PRE-EXISTING, THAT
01:15:44 7 WASN'T AN ISSUE IN THE CASE, YOUR HONOR. THAT'S TOTALLY
01:15:47 8 UNFAIR.

01:15:48 9 THE COURT: SO YOU ARE TRYING TO FIX THAT RATHER THAN
01:15:50 10 HAVING OBJECTED WHEN MR. LOUGHEED WAS CONFRONTED WITH THE
01:15:54 11 DOCUMENT.

01:15:54 12 MR. VAN NEST: THIS IS THE FIRST I'M HEARING OF THIS.

01:15:56 13 THE COURT: I MEAN, I'M TRUSTING MY MEMORY ON
01:15:59 14 MR. LOUGHEED'S CROSS-EXAMINATION.

01:16:00 15 MR. NELSON: RIGHT.

01:16:00 16 SO THE REASON, YOUR HONOR, IS BECAUSE I DIDN'T KNOW, IT
01:16:04 17 WAS NEVER AN ISSUE IN THE CASE. AND I HAD TO GO BACK AND LOOK
01:16:07 18 BECAUSE IT MADE NO SENSE TO ME BECAUSE THEIR EXPERT HAD NEVER
01:16:10 19 SAID THIS; RIGHT.

01:16:11 20 SO -- AND MR. LOUGHEED HAS NO FOUNDATION BECAUSE HE WASN'T
01:16:15 21 INVOLVED IN IT WHICH HE TESTIFIED TO AND THAT'S WHY HE WAS
01:16:18 22 PERPLEXED AT THE REPRESENTATIONS THAT THESE SOMEHOW
01:16:22 23 PRE-EXISTED.

01:16:22 24 THAT'S THE ONLY THING. IF WE DON'T GET ANY ARGUMENT ABOUT
01:16:25 25 THAT, THAT SOMEHOW THESE COMMANDS PRE-EXISTED, WHICH IS FALSE

01:16:30 1 UNDER THE RECORD, THEN I DON'T REALLY HAVE A PROBLEM WITH THAT.

01:16:34 2 THE COURT: YOU DON'T HAVE A PROBLEM STRIKING

01:16:36 3 MR. CHAMBERS'S TESTIMONY.

01:16:36 4 MR. NELSON: YEAH, I DON'T HAVE A PROBLEM WITH THAT,
01:16:38 5 YOUR HONOR.

01:16:39 6 I JUST DON'T THINK IT'S FAIR TO COME IN AND MISREPRESENT
01:16:42 7 QUESTIONS THAT, FOR A MANUAL THAT HAS BEEN INVOLVED IN THE
01:16:45 8 CASE, THAT THEIR EXPERT HAD AND THEIR EXPERT RELIED ON AND
01:16:48 9 NEVER ONCE TOOK THE POSITION THAT THESE COMMANDS PRE-EXISTED,
01:16:53 10 I'M SORRY I DIDN'T RAISE IT AT THE TIME, YOUR HONOR, BUT I
01:16:55 11 DIDN'T KNOW BECAUSE HOW COULD I.

01:16:58 12 THE COURT: BUT YOU ARE COMING IN TO CURE SOMETHING
01:17:02 13 FROM A FEW DAYS AGO BY INTRODUCING THE SPECTER OF THE AGREEMENT
01:17:07 14 THAT YOU HAVEN'T DISCLOSED.

01:17:08 15 MR. NELSON: WELL, IT'S JUST THE JOINT DEVELOPMENT
01:17:10 16 THE WORK, YOUR HONOR, BUT I OBVIOUSLY DIDN'T KNOW ANYTHING
01:17:12 17 ABOUT TESTIMONY CONCERNING --

01:17:13 18 THE COURT: WELL, I'M INCLINED TO STRIKE IT.

01:17:15 19 MR. VAN NEST: THANK YOU.

01:17:16 20 THE COURT: HE DIDN'T CALL IT DEC, I DON'T KNOW THE
01:17:19 21 NAME OF THE COMPANY.

01:17:19 22 MR. VAN NEST: DIGITAL EQUIPMENT CORPORATION.

01:17:20 23 HE CALLED IT DIGITAL EQUIPMENT CORPORATION. HE CALLED IT
01:17:23 24 AN AGREEMENT TO USE ALLOWING THEM TO USE CISCO'S CLI. THAT'S
01:17:29 25 WHAT HE SAID.

01:17:30 1 HE MAY NOT HAVE CALLED IT A LICENSE, BUT HE CALLED IT AN
01:17:34 2 AGREEMENT. AND IT GAVE THEM PERMISSION.

01:17:36 3 AND I JUST ASK TO REMIND THE COURT TO MAKE SURE IT'S CLEAR
01:17:39 4 THAT IT'S NOT MY EXAMINATION BUT HIS EXAMINATION BY HIS LAWYER.

01:17:43 5 THE COURT: WELL, I'M GOING TO STRIKE IT. I'M GOING
01:17:46 6 TO DO IT AS QUICKLY AS I CAN. IT WAS A SMALL POINT. I NEVER
01:17:49 7 LIKE TO MAKE THEM BIGGER POINTS.

01:17:51 8 MR. NELSON: RIGHT. WELL, CAN I HAVE THE
01:17:53 9 CROSS-EXAMINATION THEN OF MR. LOUGHEED AND THE REPRESENTATION
01:17:56 10 STRICKEN AS WELL? BECAUSE THAT'S EXACTLY THE SAME ISSUE.

01:18:00 11 MR. VAN NEST: I WILL BE HAPPY TO LOOK AT IT. THIS
01:18:02 12 IS THE FIRST I'M HEARING ABOUT IT.

01:18:04 13 THE COURT: YOU ARE GOING TO HAVE TO PULL THE
01:18:06 14 TESTIMONY.

01:18:07 15 MR. NELSON: WE WILL PULL THE TESTIMONY.

01:18:08 16 THE COURT: BECAUSE THIS, I HAVE IN MY NOTES THAT
01:18:12 17 I'VE JUST WROTE AN HOUR AGO, AND I WOULD HAVE MR. LOUGHEED, BUT
01:18:15 18 IT WOULD TAKE ME TIME.

01:18:16 19 MR. NELSON: NO, NO, I UNDERSTAND AND WE WILL BRING
01:18:18 20 THAT TESTIMONY TO YOUR HONOR TOMORROW MORNING FOR THAT
01:18:20 21 IMPLICATION. AND THAT'S ALL. SO AS LONG AS -- OKAY. I'M DONE
01:18:26 22 NOW.

01:18:26 23 THE COURT: ALL RIGHT. LET'S BRING THE JURY IN.

01:18:31 24 MR. VAN NEST: THANK YOU, YOUR HONOR.

01:18:36 25 (JURY IN AT 1:19 P.M.)

01:19:38 1 THE COURT: GOOD AFTERNOON, EVERYONE. ALL OF OUR
01:19:40 2 JURORS ARE BACK AND MR. CHAMBERS HAS COME BACK TO THE WITNESS
01:19:45 3 STAND.

01:19:46 4 MR. VAN NEST IS GOING TO CONTINUE WITH HIS
01:19:48 5 CROSS-EXAMINATION.

01:19:49 6 LADIES AND GENTLEMEN, THERE WAS ONE ANSWER THAT WAS,
01:19:54 7 QUESTION AND ANSWER THAT WAS GIVEN IN MR. CHAMBERS'S DIRECT
01:20:00 8 EXAMINATION, THAT'S WHEN MR. DESMARAIS WAS ASKING THE
01:20:03 9 QUESTIONS, AND IT HAD TO DO WITH THE DIGITAL EQUIPMENT
01:20:06 10 CORPORATION HAVING AN AGREEMENT WITH CISCO IN THE EARLY 1990'S.

01:20:11 11 I AM GOING TO STRIKE THAT QUESTION AND ANSWER AND YOU ARE
01:20:15 12 NOT TO CONSIDER IT IN ANY WAY.

01:20:19 13 ALL RIGHT. MR. VAN NEST WOULD YOU LIKE TO CONTINUE?

01:20:21 14 MR. VAN NEST: I WOULD, YOUR HONOR.

01:20:22 15 THE COURT: GO AHEAD, PLEASE.

01:20:23 16 Q. MR. CHAMBERS, GOOD AFTERNOON.

01:20:24 17 A. GOOD AFTERNOON, MR. VAN NEST.

01:20:25 18 Q. WOULD YOU OPEN YOUR NOTEBOOK TO TX 5423, PLEASE.

01:20:37 19 AND DO YOU RECOGNIZE THAT AS ANOTHER ONE OF THE BRIEFINGS
01:20:40 20 THAT YOU TYPICALLY RECEIVE BEFORE TALKING WITH CUSTOMERS?

01:20:44 21 A. YES, I DO.

01:20:45 22 Q. THE SAME FORMAT AS THE ONE WE LOOKED AT EARLIER?

01:20:48 23 A. LET ME JUST LOOK FOR A SECOND. PRETTY SIMILAR, YES, SIR.

01:20:55 24 MR. VAN NEST: OKAY. I WOULD OFFER 5423 INTO
01:20:57 25 EVIDENCE YOUR HONOR.

01:20:58 1 THE COURT: ANY OBJECTION?

01:20:59 2 MR. DESMARAI: NO.

01:21:00 3 THE COURT: IT WILL BE ADMITTED.

01:21:03 4 (DEFENDANT'S EXHIBIT 5423 WAS ADMITTED INTO EVIDENCE.)

01:21:03 5 BY MR. VAN NEST:

01:21:03 6 Q. MR. CHAMBERS, ADP, ALSO A BIG CUSTOMER OF CISCO; RIGHT?

01:21:08 7 A. YES, THEY ARE.

01:21:09 8 Q. AND MIKE CAPONE WAS THE CHIEF INFORMATION OFFICER THERE?

01:21:12 9 A. YES, HE IS.

01:21:14 10 Q. THIS IS ANOTHER CLIENT THAT YOU HAD OCCASION TO VISIT BACK

01:21:17 11 WHEN YOU WERE CEO?

01:21:18 12 A. THAT IS CORRECT.

01:21:19 13 Q. AND AN IMPORTANT CLIENT AT THAT; RIGHT?

01:21:21 14 A. ONE OF THE MANY IMPORTANT CLIENTS, YES.

01:21:24 15 Q. THEY WERE A CLIENT THAT WAS GOING TO THE CLOUD, AS THEY

01:21:28 16 WOULD PUT IT, ALONG WITH OTHERS; RIGHT?

01:21:29 17 A. THAT WOULD BE CORRECT.

01:21:30 18 Q. AND THIS IS A BRIEFING YOU RECEIVED LIKE THE ONE WE LOOKED

01:21:33 19 AT THIS MORNING. AND IT SHOWS YOU AND SOME OTHERS FROM CISCO

01:21:37 20 AS ATTENDEES, JOHN CHAMBERS, CEO, SOME OTHER FOLKS AS WELL FROM

01:21:44 21 ADP. THAT'S THE ATTENDEE LIST?

01:21:47 22 A. IT'S MUCH LIKE, SOMETIMES THOSE CHANGE AT THE LAST MOMENT,

01:21:50 23 BUT I HAVE NO REASON TO BELIEVE THAT WASN'T CORRECT.

01:21:53 24 Q. AND THIS IS ALSO IN THE 2011 TIME PERIOD, IF WE CAN GO TO

01:21:57 25 THE TOP, THIS SAYS JULY 14, 2011. DO YOU SEE THAT UP HERE IN

01:22:00 1 THE TOP OF THE PAGE? IF YOU PREFER TO LOOK AT IT ON THE
01:22:03 2 SCREEN, YOU CAN, MR. CHAMBERS.

01:22:04 3 A. IT SAYS, 14, OKAY.

01:22:08 4 Q. SO IF WE COULD GO DOWN TO THE SECOND PAGE, PAGE 3,
01:22:12 5 COMPETITIVE ISSUES, URGENT ACCOUNTS, THIS IS ON THE THIRD PAGE,
01:22:19 6 MR. CHAMBERS. AGAIN, I'VE GOT IT ON THE SCREEN.

01:22:22 7 A. OKAY. I'VE GOT IT, SIR.

01:22:23 8 Q. ADP JUST AWARDED ARISTA ITS 10G, THAT'S 10 GIGABIT DATA
01:22:29 9 CENTER SWITCHING EXPANSION, THAT'S WHAT THIS SAYS?

01:22:33 10 A. THAT'S CORRECT.

01:22:33 11 Q. AND DC, IN THIS CONTEXT THAT MEANS DATA CENTER, CORRECT?

01:22:36 12 A. DC, YES.

01:22:37 13 Q. 10G IS GIGABIT SPEED?

01:22:41 14 A. THAT'S CORRECT.

01:22:42 15 Q. THE REASON GIVEN FOR SELECTION IS 10G FUNCTIONALITY, ADP
01:22:46 16 WANTED FROM CISCO, IS IN THE NEXUS 7K F2 CARD, NOT AVAILABLE
01:22:52 17 UNTIL NOVEMBER 2011, AND CISCO WOULD NOT COMMIT TO DELIVERY
01:22:58 18 WITH FINANCIAL PENALTIES FOR DELAY; DO YOU SEE THAT?

01:23:01 19 A. YES, I DO.

01:23:02 20 Q. THAT MEANS THAT THE PRODUCT THAT YOU WERE CLAIMING COULD
01:23:06 21 COMPETE WITH ARISTA WOULDN'T BE READY UNTIL NOVEMBER WHICH WAS
01:23:09 22 SEVERAL MONTHS LATER THAN THE CUSTOMER WANTED; RIGHT?

01:23:12 23 A. THAT WOULD BE ONE OF THE ELEMENTS OF THE DECISION, YES,
01:23:14 24 SIR.

01:23:14 25 Q. AND IT LOOKS LIKE, AS THE NEXT LINE SHOWS, ACTUALLY CISCO

01:23:20 1 MADE SOME OFFERS, SOME FINANCIAL OFFERS TO SWEETEN THE DEAL AND
01:23:25 2 ATTEMPT TO HOLD OFF THEIR SELECTION OF ARISTA; RIGHT?

01:23:28 3 A. LET ME JUST READ IT FOR A MOMENT, PLEASE.

01:23:32 4 Q. LET'S PUT IT UP FOR THE JURORS. LET'S HIGHLIGHT THE NEXT
01:23:36 5 SECTION AS WELL. DURING THE NEXUS VERSUS ARISTA NEGOTIATION,
01:23:41 6 IN PLACE OF DELIVERY PENALTIES, CISCO OFFERED ADP, AN EXTENDED
01:23:45 7 LOAN OF CURRENTLY AVAILABLE CARDS VALUED UNTIL THE F2 CARD,
01:23:48 8 THAT'S THE NEW ONE, IS DELIVERED, SERVICES VALUED AT \$200,000
01:23:54 9 IN LIEU OF A DELIVERY PENALTY; DO YOU SEE THAT?

01:23:56 10 A. YES, I DO.

01:23:57 11 Q. THAT'S REFLECTING THAT IN THE NEGOTIATIONS TO KEEP ARISTA
01:24:02 12 OUT OF THIS ACCOUNT, CISCO MADE SOME FINANCIAL OFFERS TO MAKE
01:24:05 13 IT MORE ATTRACTIVE FOR THE CUSTOMER; RIGHT?

01:24:07 14 A. I WOULD IMAGINE THERE WERE MORE THAN FINANCIAL OFFERS, BUT
01:24:09 15 THAT'S PART OF THE ELEMENT, YES.

01:24:11 16 Q. THIS MAY BE A SUMMARY AND THERE MAY BE MORE INDEED, BUT
01:24:15 17 THIS IS WHAT WE'VE GOT IN THE DOCUMENTS WRITTEN BY YOUR SALES
01:24:18 18 FOLKS; RIGHT?

01:24:18 19 A. THAT IS CORRECT.

01:24:19 20 Q. OKAY. AND NOTWITHSTANDING ALL THOSE OFFERS AND
01:24:22 21 NOTWITHSTANDING ALL THOSE BENEFITS, AS THIS DOCUMENT REFLECTS,
01:24:25 22 ARISTA WAS STILL THE SELECTED VENDOR; RIGHT?

01:24:27 23 A. YES. IF I MAY ADD, I THINK THAT BOTH IN THE MICROSOFT
01:24:33 24 EXAMPLE AND THE ADP EXAMPLE, CISCO DID VERY WELL IN THOSE
01:24:36 25 ACCOUNTS AS WELL.

01:24:37 1 Q. OKAY. NOW BY 2013, THE PRESS WAS ASKING YOU,
01:24:43 2 MR. CHAMBERS, WHAT IS CISCO GOING TO DO ABOUT ARISTA IN THIS
01:24:46 3 COMPETITION IN THE SDN MARKET; RIGHT?

01:24:49 4 A. THAT WOULD BE FAIR.

01:24:51 5 Q. OKAY. AND YOU WERE TELLING THE PRESS THAT YOU KNEW EVERY
01:24:56 6 ACCOUNT ARISTA WAS IN AND EXACTLY WHAT ARISTA WAS DOING; RIGHT?

01:25:01 7 A. I WOULD BE SURPRISED IF IT WERE THAT DIRECT, BUT WAS I
01:25:06 8 VERY MUCH AWARE OF ARISTA AND VERY MUCH AWARE OF THEIR MOMENTUM
01:25:13 9 IN THE MARKET AND WHAT THEY WERE FOCUSSED ON, YES. I THINK
01:25:16 10 THEY HAD 4,000 ACCOUNTS, I DON'T THINK I WOULD BE AWARE OF
01:25:19 11 EVERY ACCOUNT.

01:25:19 12 Q. OKAY. WELL, LET'S TAKE A LOOK AT HOW DIRECT YOU WERE.
01:25:22 13 WOULD YOU LOOK AT TX 8193, PLEASE. IT'S IN YOUR BINDER NEAR
01:25:30 14 THE BACK. DO YOU HAVE IT?

01:25:36 15 A. YES, I DO.

01:25:37 16 Q. OKAY. THAT'S AN ARTICLE IN *BARREN'S*; RIGHT. *BARREN'S* IS
01:25:43 17 A FINANCIAL PUBLICATION, CORRECT?

01:25:45 18 A. YES, IT IS.

01:25:46 19 Q. AND *BARREN'S* IS ONE OF THE PUBLICATIONS YOU GIVE
01:25:49 20 INTERVIEWS TO FROM TIME TO TIME?

01:25:51 21 A. YES, THAT'S CORRECT.

01:25:51 22 Q. AND THIS AUTHOR TIERNAN RAY, THAT'S SOMEONE YOU KNOW?

01:25:56 23 A. I'M SORRY, WHAT WAS THE NAME AGAIN, SIR.

01:25:58 24 Q. TIERNAN RAY?

01:26:00 25 A. IF IT'S THE PERSON INTERVIEWING ME, I UNDERSTAND.

01:26:05 1 Q. OKAY. AND DO YOU RECOGNIZE THIS PICTURE OF YOU IN THE
01:26:10 2 ARTICLE REGARDING AN INTERVIEW WITH YOU BACK IN SEPTEMBER OF
01:26:13 3 2013?

01:26:16 4 A. I HAVE NO REASON TO DOUBT THAT THAT'S THE TIMEFRAME.

01:26:22 5 MR. VAN NEST: FAIR ENOUGH. I WILL OFFER 8193 IN
01:26:24 6 EVIDENCE YOUR HONOR.

01:26:24 7 THE COURT: ANY OBJECTION?

01:26:26 8 MR. DESMARAIS: NO, YOUR HONOR.

01:26:27 9 THE COURT: IT WILL BE ADMITTED.

01:26:29 10 (DEFENDANT'S EXHIBIT 8193 WAS ADMITTED INTO EVIDENCE.)

01:26:29 11 BY MR. VAN NEST:

01:26:31 12 Q. THIS IS AN INTERVIEW WITH YOU, THERE'S A HANDSOME PICTURE
01:26:33 13 ON THE FRONT PAGE, MR. CHAMBERS, THAT'S YOU?

01:26:36 14 A. THANK YOU FOR THE COMPLIMENT, IT MIGHT BE THE LAST ONE I
01:26:39 15 GET.

01:26:40 16 Q. YOU ARE MAKING A VISIT THERE AT A CONFERENCE; RIGHT?

01:26:42 17 A. UH-HUH.

01:26:43 18 Q. OKAY. AND THEN ON THE SECOND PAGE, THERE'S A QUOTE FROM
01:26:46 19 AN INTERVIEW THAT YOU GAVE. IF WE COULD HIGHLIGHT THAT AT THE
01:26:49 20 MIDDLE.

01:26:52 21 ACTUALLY, LET'S START WITH THE QUESTION RIGHT ABOVE THAT.
01:26:56 22 IF WE COULD. THE QUESTION IS ABOUT ARISTA.

01:27:01 23 "WHEN I POSE TO CHAMBERS THAT ARISTA NETWORKS, THE SANTA
01:27:06 24 CLARA, CALIFORNIA STARTUP THAT IS STORMING THE DATA CENTER WITH
01:27:08 25 VERY SUCCESSFUL PRODUCTS, IS THE MOST SERIOUS COMPETITOR THE

01:27:14 1 COMPANY HAS, HE REPLIES, NOT EVEN CLOSE."

01:27:17 2 DO YOU SEE THAT?

01:27:17 3 A. YES, I DO.

01:27:18 4 Q. DOES THAT SOUND LIKE SOMETHING YOU WOULD SAY?

01:27:20 5 A. AT VARIOUS POINTS IN TIME, DEPENDING ON THE FACTS AT THE
01:27:25 6 TIME. THAT WAS MY VIEW AT THE TIME, CORRECT.

01:27:26 7 Q. OKAY. NOW LET'S GO TO THE ANSWER. AND YOU ARE TALKING
01:27:30 8 HERE ABOUT ARISTA. AND YOU SAY, "THERE HAS ALWAYS BEEN
01:27:35 9 SOMEBODY WHO IS GOING TO BE OUR TOUGHEST COMPETITOR." IT LISTS
01:27:39 10 SOME, "THEY WERE TOUGH 15, 20 YEARS AGO. ARISTA WILL BE ONE
01:27:42 11 AREA OF THE MARKET, THE DATA CENTER. THEY USE MERCHANT
01:27:46 12 SILICON. I KNOW EVERY ACCOUNT THEY'RE IN, I KNOW EXACTLY WHAT
01:27:49 13 THEY'RE DOING."

01:27:52 14 ISN'T THAT WHAT YOU TOLD MR. RAY IN THE FALL OF 2013?

01:27:54 15 A. IT'S A QUOTE THAT I HAVEN'T SEEN, BUT I'M NOT GOING TO
01:27:58 16 DISPUTE IT.

01:27:58 17 Q. OKAY. AND WHAT YOU WERE TELLING PEOPLE IN 2013 ABOUT WHAT
01:28:03 18 YOU WOULD DO RELATED TO A COMPANY CALLED INSIEME; RIGHT?

01:28:10 19 A. SO THIS IS THE FALL OF 2013?

01:28:13 20 Q. THAT'S RIGHT, SIR.

01:28:14 21 A. THAT'S CORRECT.

01:28:15 22 Q. OKAY. AND IN ORDER TO ADDRESS THIS TRANSITION WE TALKED
01:28:18 23 ABOUT THIS MORNING, THE TRANSITION TO THE SOFTWARE DEFINED
01:28:22 24 NETWORKING MARKET, YOU FUNDED AND LATER ACQUIRED A COMPANY
01:28:27 25 CALLED INSIEME; RIGHT? YOU CISCO?

01:28:32 1 A. IT'S ONE OF THE THINGS, YES, WE DID.

01:28:34 2 Q. OKAY. INSIEME WAS A COMPANY OUTSIDE CISCO THAT YOU FUNDED
01:28:37 3 INITIALLY TO DEVELOP AND ACCELERATE THE DEVELOPMENT OF SOFTWARE
01:28:45 4 DEFINED NETWORKING EQUIPMENT; RIGHT?

01:28:47 5 A. IT WAS A LITTLE BIT MORE THAN THAT. WE TOOK CISCO
01:28:50 6 EMPLOYEES, MOVED THEM OUTSIDE THE COMPANY, RECRUITED FROM
01:28:53 7 OUTSIDE THE COMPANY, AGREED UPON A PREDEFINED SET OF
01:28:55 8 OBJECTIVES, AND IF THEY MET THOSE THEN WE SPUN THEM BACK INTO
01:29:00 9 THE COMPANY, YES.

01:29:00 10 Q. AND BY THE WAY, ARE YOU AWARE THAT ONE OF THE COMPANIES
01:29:03 11 YOU WERE RECRUITING FROM FOR INSIEME WAS ARISTA ITSELF?

01:29:06 12 A. IF I REMEMBER RIGHT, I THINK WE RECRUITED FROM ALMOST
01:29:10 13 EVERY MAJOR STARTUP IN THE VALLEY. THEY DID A GOOD JOB OF
01:29:14 14 RECRUITING. ARISTA WAS PROBABLY ONE THAT THEY RECRUITED.

01:29:17 15 Q. OKAY. SO THEY RECRUITED FROM ARISTA, AND THERE'S NOTHING
01:29:20 16 WRONG WITH THAT?

01:29:21 17 A. THAT'S CORRECT. PEOPLE WOULD MIGRATE BACK AND FORTH.

01:29:24 18 Q. BACK AND FORTH. OKAY.

01:29:24 19 NOW AFTER YOU FUNDED THEM AND AFTER THEY GOT THEIR PRODUCT
01:29:27 20 UNDER WAY, THEN YOU ACTUALLY ACQUIRED THEM, CISCO DID?

01:29:30 21 A. WE HAD A PREDETERMINED ACQUISITION BASED ON THE SUCCESS OF
01:29:34 22 THE PRODUCT, THAT WAS CORRECT.

01:29:35 23 Q. AND ALL OF THIS COST, AND BY "ALL THIS" I MEAN FUNDING
01:29:38 24 THEM, GETTING THEM UP AND RUNNING, OPERATING THEM AND THEN
01:29:41 25 ACQUIRING THEM, THAT ALL COST ABOUT A BILLION DOLLARS?

01:29:45 1 A. THAT IS CORRECT.

01:29:45 2 Q. AND ONE OF THE PRODUCTS THEY CAME UP WITH WAS THE NEXUS
01:29:50 3 9000 THAT YOU MENTIONED THIS MORNING IN YOUR TESTIMONY?

01:29:53 4 A. THAT IS CORRECT.

01:29:53 5 Q. OKAY. SO THAT PRODUCT WAS DEVELOPED OUTSIDE CISCO AND IN
01:29:57 6 INSIEME AND THEN ACQUIRED BY CISCO TO COMPETE WITH ARISTA AND
01:30:02 7 OTHERS; RIGHT?

01:30:02 8 A. I THINK THAT WOULD BE SIMPLIFYING IT A LITTLE BIT.

01:30:06 9 INSIEME WAS A CISCO -- WE IMPROVED PART OF IT FROM THE VERY
01:30:13 10 BEGINNING, WE WOULD CONTROL WHAT THE PRODUCT WOULD BE AND IT
01:30:14 11 WAS RUN BY KEN, BUT THE OVERALL CONCEPT IS RIGHT.

01:30:15 12 Q. OKAY. AND THE OVERALL CONCEPT WAS YOU WANTED A COMPANY
01:30:19 13 WITH A FASTER CULTURE OF INNOVATION TO DEVELOP THIS BECAUSE YOU
01:30:25 14 WERE BEHIND IN THE SOFTWARE DEVELOPING NETWORKING MARKET;
01:30:30 15 RIGHT?

01:30:30 16 A. WE HAD USED THIS APPROACH THREE DIFFERENT TIMES. WE OFTEN
01:30:34 17 DO IT WHEN WE WANT TO ATTRACT TALENT FROM THE OUTSIDE, AND PART
01:30:37 18 OF THE REASON WAS WHERE WE WERE IN THE MARKET, CORRECT.

01:30:40 19 Q. AND YOU SAID THIS MORNING THERE ARE 15,000 CISCO EMPLOYEES
01:30:43 20 IN THE VALLEY. AREN'T THERE SOMETHING LIKE 55,000 EMPLOYEES
01:30:47 21 WORLDWIDE?

01:30:48 22 A. ABOUT 74,000.

01:30:50 23 Q. 74,000. AND AMONG THAT 74,000 ENGINEERS, YOU STILL FELT
01:30:58 24 YOU COULD DO BETTER AND FASTER OUTSIDE CISCO, AND THAT'S WHY
01:31:06 25 YOU SET UP INSIEME; RIGHT?

01:31:06 1 A. I THINK THAT WOULD BE TOO SIMPLISTIC AN ANSWER.

01:31:10 2 WHEN YOU MOVE INTO A NEW AREA, YOU CAN DO CERTAIN THINGS

01:31:13 3 WITH YOUR EXISTING EMPLOYEES, THEN YOU'VE GOT TO BRING IN

01:31:17 4 EXPERTISE FROM OTHER SIDES, AND YOU'VE GOT TO MOVE WITH

01:31:17 5 TREMENDOUS SPEED, AND YOU'VE GOT TO BE ABLE TO COMPETE WITH

01:31:21 6 STARTUPS. AS I SAID, WE'VE DONE WITH THREE TIMES BEFORE AND

01:31:24 7 IT'S BEEN VERY SUCCESSFUL IN THIS CASE.

01:31:25 8 Q. AND NOW AS A MATTER OF FACT, YOU WERE TELLING THE PRESS

01:31:28 9 WITH RESPECT TO ARISTA AND INSIEME, WATCH OUT, INSIEME HAS GOT

01:31:35 10 AN ARISTA KILLER; RIGHT?

01:31:37 11 A. I WAS BEING VERY DIRECT WITH THE PRESS. I THOUGHT WE HAD

01:31:40 12 A GREAT PRODUCT THAT, AS IT CAME INTO MARKET, THAT WE WOULD BE

01:31:44 13 VERY SUCCESSFUL, WHICH WE HAVE BEEN. THAT OUR GROWTH RATE

01:31:47 14 SINCE THAT PRODUCT WAS LAUNCHED IS UP TO \$2.4 BILLION, WHERE

01:31:52 15 INSIEME IS 1 BILLION. AND I THINK WE HAVE BEEN VERY --

01:31:56 16 Q. EXCUSE ME, MR. CHAMBERS, WHAT I ASKED YOU WAS, DID YOU

01:31:59 17 TELL THE PRESS THAT INSIEME WAS AN ARISTA KILLER?

01:32:02 18 A. I WAS BE SURPRISED IF I USED THOSE WORDS. I SAID WE WERE

01:32:06 19 GOING TO BE VERY COMPETITIVE, WHICH WE WERE AND WHICH WE ARE.

01:32:11 20 Q. CAN YOU OPEN UP YOUR BINDER TO 5227, PLEASE, MR. CHAMBERS.

01:32:15 21 A. SURE, GIVE ME A SECOND.

01:32:16 22 Q. SURE. DO YOU HAVE IT?

01:32:25 23 A. YES, I DO.

01:32:26 24 Q. THAT'S ANOTHER ARTICLE BY *BARREN'S*?

01:32:29 25 A. LET ME JUST HAVE A SECOND. YES.

01:32:32 1 Q. AND THAT'S TIERNAN RAY, THE SAME GENTLEMAN WE TALKED ABOUT
01:32:36 2 EARLIER?

01:32:36 3 A. UH-HUH.

01:32:37 4 Q. AND DO YOU HAVE ANY REASON TO DOUBT THAT THIS REFLECTS AN
01:32:41 5 INTERVIEW YOU GAVE TO MR. ROY IN OCTOBER OF 2013?

01:32:44 6 A. IT'S PROBABLY A SUMMARY OF THE INTERVIEW. OBVIOUSLY THE
01:32:48 7 MEDIA PUTS ITS OWN POSITION ON IT.

01:32:50 8 MR. VAN NEST: OKAY. I WILL MOVE 5227 INTO EVIDENCE.

01:32:54 9 MR. DESMARAIS: NO OBJECTION.

01:32:55 10 THE COURT: IT WILL BE ADMITTED.

01:32:57 11 (DEFENDANT'S EXHIBIT 5227 WAS ADMITTED INTO EVIDENCE.)

01:32:57 12 BY MR. VAN NEST:

01:32:57 13 Q. AND COULD WE GO TO PAGE 2. AND JUST UNDER THE CHART,
01:33:03 14 COULD WE HIGHLIGHT THE SECTION THERE DISCUSSING -- ALL RIGHT.
01:33:08 15 NOW THIS AGAIN IS BANNER, SO YOU KNOW THIS IS FOR PUBLICATION;
01:33:11 16 RIGHT?

01:33:11 17 A. THAT IS CORRECT.

01:33:12 18 Q. OKAY. CISCO CEO, JOHN CHAMBERS, ACKNOWLEDGES THE THREAT
01:33:19 19 FROM CLOUD PROVIDERS USING WHITE BOX SWITCH GEAR. AS FOR
01:33:24 20 ARISTA, HE TOLD *BARREN'S* THAT HIS COMPANY HAS FACED 100
01:33:28 21 STARTUPS LIKE ARISTA OVER THE YEARS, AND ALWAYS COME OUT ON
01:33:32 22 TOP. JUST WAIT, HE SAYS, TILL CISCO NEXT MONTH TAKES THE WRAPS
01:33:37 23 OFF ITS ARISTA KILLER, THE STARTUP CALLED INSIEME, WHICH CISCO
01:33:41 24 FUNDED.

01:33:42 25 ISN'T THAT WHAT YOU TOLD MR. ROY?

01:33:44 1 A. TWO THOUGHTS. FIRST OF ALL, IT WASN'T ARISTA, I DID THE
01:33:48 2 SAME THING EARLIER, I GET CISCO AND ARISTA CONFUSED. I THINK
01:33:51 3 YOU JUST SAID ARISTA TWICE ON THAT.

01:33:54 4 Q. PERHAPS?

01:33:54 5 A. BUT STILL, CISCO'S NEXT MONTHS TAKES THE WRAPS OFF.
01:33:59 6 SO YEAH, WE GOT A PRODUCT COMING OUT, IT'S GOING TO BE TOO
01:34:03 7 GOOD, AND I FULLY EXPECTED TO GAIN MARKET SHARE.

01:34:05 8 THIS IS NOT A DIRECT QUOTE. YOU CAN SEE THAT ON THAT. I
01:34:08 9 THINK MY PEER, JAYSHREE, GOT QUOTED IN THE PARAGRAPH BEFORE
01:34:10 10 THAT WHICH INDICATES THAT HERS WAS A DIRECT QUOTE, MINE WAS
01:34:14 11 PROBABLY NOT.

01:34:15 12 AND I DO BELIEVE WE ARE GOING TO WIN THAT BATTLE AND I
01:34:18 13 THINK WE HAVE. I STILL FIND IT UNLIKELY I WOULD HAVE USED THE
01:34:21 14 WORD "KILLER," BUT IT'S IRRELEVANT.

01:34:23 15 Q. YOU THINK YOU'VE WON THE BATTLE WITH ARISTA IN THE
01:34:25 16 SOFTWARE DEFINED NETWORKING MARKET, MR. CHAMBERS?

01:34:27 17 A. I THINK WE BROUGHT OUT A PRODUCT THAT IS GOING TO GET OUR
01:34:30 18 LEADERSHIP IN THE SOFTWARE DEFINED NETTING AND THE GROWTH DID
01:34:35 19 OCCUR.

01:34:35 20 Q. OKAY. BUT CLEARLY YOU WERE TELLING THE PRESS THAT INSIEME
01:34:39 21 WAS ONE OF THE ANSWERS YOUR COMPANY HAD TO ARISTA'S SUCCESS IN
01:34:42 22 THE MARKET; RIGHT?

01:34:43 23 A. THAT'S FAIR.

01:34:44 24 Q. NO DOUBT ABOUT THAT?

01:34:46 25 A. BUT AGAIN REMEMBER --

01:34:47 1 Q. NO DOUBT ABOUT THAT, MR. CHAMBERS?

01:34:50 2 A. IT'S VMWARE, IT IS ALSO WHITE BOX, IT IS ALSO ARISTA.

01:34:55 3 Q. OKAY. NOW AS I THINK WE'VE SEEN, YOU ARE OFTEN CALLED TO

01:34:59 4 SPEAK ON BEHALF OF CISCO PUBLICLY?

01:35:01 5 A. THAT IS CORRECT.

01:35:02 6 Q. AND YOU DID THAT A LOT AT CEO?

01:35:04 7 A. YES.

01:35:05 8 Q. SPOKE TO THE PRESS FROM TIME TO TIME?

01:35:08 9 A. UH-HUH.

01:35:09 10 Q. SPOKE AT CONFERENCES?

01:35:10 11 A. CORRECT.

01:35:11 12 Q. ATTENDED LARGE FUNCTIONS, AND YOU WERE THE REPRESENTATIVE

01:35:13 13 FOR CISCO?

01:35:14 14 A. YES.

01:35:15 15 Q. RIGHT. AND YOU'VE SAID MANY TIMES THAT CISCO IS AN OPEN

01:35:19 16 STANDARD COMPANY, PERIOD; RIGHT?

01:35:24 17 A. I DON'T KNOW IF I WOULD SAY OPEN STANDARD PERIOD, BUT WE

01:35:27 18 ARE AN OPEN STANDARD COMPANY, YES.

01:35:29 19 Q. AND IN FACT, YOU SAID HAVE THAT, WE ARE AN OPEN STANDARD

01:35:32 20 COMPANY; RIGHT?

01:35:32 21 A. CORRECT.

01:35:33 22 Q. AND THAT CISCO BELIEVES IN OPEN STANDARDS?

01:35:36 23 A. YES, WE DO.

01:35:37 24 Q. AND THAT CISCO PROMOTES OPEN STANDARDS?

01:35:40 25 A. YES.

01:35:41 1

Q. RIGHT?

01:35:41 2

A. YES.

01:35:42 3

Q. YOU SAID THAT TOO. AND THAT OPEN STANDARDS IS A GOOD WAY

01:35:46 4

TO DO BUSINESS, YOU SAID THAT AS WELL?

01:35:48 5

A. PROBABLY.

01:35:49 6

Q. GOOD FOR EVERYBODY?

01:35:51 7

A. I DON'T KNOW IF I EVER SAID THAT, BUT YES.

01:35:55 8

Q. ALL RIGHT. AND IN FACT NETWORKING IN PARTICULAR IS FULL

01:35:59 9

OF INDUSTRY STANDARDS; RIGHT?

01:36:03 10

A. FULL OF INDUSTRY STANDARDS, BUT ALSO PROPRIETARY

01:36:06 11

CAPABILITIES, YES.

01:36:07 12

Q. INDUSTRY STANDARD PROTOCOLS THAT COMPANIES FOLLOW SO THEIR

01:36:11 13

SWITCHES CAN INTEROPERATE; RIGHT?

01:36:13 14

A. THERE ARE SOME THINGS THAT ARE OPEN STANDARDS, THERE ARE

01:36:19 15

SOME THINGS THAT ARE GOLD STANDARDS, AND THERE ARE SOME THINGS

01:36:22 16

THAT ARE PROPRIETARY APPROACHES.

01:36:23 17

Q. AND YOU KNOW THAT CISCO, THROUGHOUT THE PERIOD OF TIME

01:36:26 18

WE'RE TALKING ABOUT, PROMOTED ITS CLI AS AN INDUSTRY STANDARD;

01:36:32 19

RIGHT?

01:36:32 20

A. I WOULD NOT AGREE WITH THAT.

01:36:33 21

Q. WOULD YOU TAKE A LOOK IN YOUR BINDER AT EXHIBIT 5299, IT'S

01:36:40 22

ALREADY IN EVIDENCE SO WE WILL PUT IT ON THE SCREEN.

01:36:50 23

DO YOU RECOGNIZE THIS, MR. CHAMBERS, AS A DATA SHEET FOR

01:36:56 24

THE NEXUS 7000 SERIES? YOU TESTIFIED ABOUT NEXUS 7000 IN YOUR

01:37:01 25

DIRECT EXAMINATION.

01:37:07 1 A. OKAY. I'M GOING TO WHERE THAT IS AGAIN.

01:37:09 2 Q. IT'S 52 -- I'M SORRY, 5229. WAIT A MINUTE, WAIT A MINUTE.

01:37:15 3 I'VE GOT IT TWICE HERE. IT'S 5299. THERE IT IS. I'M SORRY,

01:37:20 4 MR. CHAMBERS. I GOOFED YOU UP. 5299.

01:37:24 5 A. I DO THAT MYSELF. OKAY. 5299.

01:37:27 6 Q. OKAY. THIS IS A --

01:37:30 7 A. SECOND PAGE --

01:37:31 8 Q. FIRST PAGE, I BELIEVE. DATA SHEET FOR THE NEXUS 7000,

01:37:37 9 THAT'S THE ONE YOU SAID MS. ULLAL WAS RESPONSIBLE FOR WHEN SHE

01:37:41 10 WAS BACK AT CISCO WORKING FOR YOU?

01:37:43 11 A. THAT'S CORRECT, 7000. YES.

01:37:46 12 Q. THAT'S THE SAME PRODUCT YOU WERE TALKING ABOUT THIS

01:37:48 13 MORNING?

01:37:48 14 A. THAT IS CORRECT.

01:37:48 15 Q. ONE OF YOUR INVENTIVE PRODUCTS IN YOUR INNOVATION STORY?

01:37:52 16 A. THAT IS CORRECT.

01:37:54 17 Q. NOW AT THE BOTTOM THERE OF THE PAGE, BY THE WAY, THESE ARE

01:37:58 18 PUBLIC; RIGHT, THEY GO OUT TO THE PUBLIC, THESE DATA SHEETS?

01:38:01 19 A. I WOULD THINK SO, YES.

01:38:03 20 Q. YEAH. OKAY. YOU SAID IN CONNECTION WITH THIS PRODUCT, IT

01:38:07 21 HAS A COMMAND-LINE INTERFACE SIMILAR TO THAT OF CISCO IOS

01:38:11 22 SOFTWARE. USES THE INDUSTRY STANDARD CISCO IOS CLI TO MINIMIZE

01:38:17 23 THE AMOUNT OF TIME NEEDED FOR OPERATORS TO LEARN THE SYSTEM AND

01:38:21 24 BECOME OPERATIONALLY PROFICIENT.

01:38:24 25 THAT'S WHAT IT SAYS; RIGHT?

01:38:25 1
01:38:26 2
01:38:27 3
01:38:28 4
01:38:32 5
01:38:37 6
01:38:43 7
01:38:45 8
01:38:50 9
01:38:55 10
01:38:59 11
01:39:12 12
01:39:14 13
01:39:15 14
01:39:18 15
01:39:20 16
01:39:23 17
01:39:24 18
01:39:31 19
01:39:32 20
01:39:34 21
01:39:35 22
01:39:36 23
01:39:37 24
01:39:38 25

A. THAT IS CORRECT.

Q. AND THAT'S THE CISCO PUBLICATION?

A. THAT'S CORRECT.

Q. RIGHT? AND WHEN IT TALKS ABOUT THE AMOUNT OF TIME NEEDED,
IT'S REFERRING TO THE FACT THAT CUSTOMERS ALL SPEND MONEY
LEARNING THE IOS CLI AND THEY CAN USE THAT TRAINING ON YOUR NEW
PRODUCT, THAT'S WHAT YOU'RE REFERRING TO THERE; RIGHT?

A. I DON'T KNOW IF I DRAW THAT CORRELATION, BUT I HAVE NO
REASON TO SAY IT ONE WAY OR THE OTHER. IT SAYS WHAT IT SAYS.

Q. OKAY. LET'S TAKE A LOOK AT ANOTHER ONE, IT'S TX 5454 IN
YOUR BINDER. AND THAT IS A DATA SHEET FOR CISCO NX-OS
NETWORKING SOFTWARE. DO YOU HAVE THAT MR. CHAMBERS?

A. YES, SIR, I DO.

Q. THAT APPEARS TO BE A CISCO PUBLICATION?

A. YES, IT DOES.

Q. AND DOWN THERE, YOUR EYES HOPEFULLY ARE BETTER THAN MINE,
BUT IT LOOKS LIKE 2012?

A. THEY ARE STILL HANGING IN THERE. GIVE ME JUST A SECOND.
YES, 2012.

MR. VAN NEST: OKAY. I MOVE 5454 INTO EVIDENCE,
YOUR HONOR.

THE COURT: ANY OBJECTION?

MR. DESMARAIS: NO, YOUR HONOR.

THE COURT: OKAY. IT WILL BE ADMITTED.

(DEFENDANT'S EXHIBIT 5454 WAS ADMITTED INTO EVIDENCE.)

01:39:38 1 BY MR. VAN NEST:

01:39:39 2 Q. OKAY. LET'S TAKE A LOOK AT THIS. THIS IS ANOTHER DATA
01:39:41 3 SHEET THAT CISCO PUBLISHED IN 2012; RIGHT?

01:39:46 4 A. THAT IS CORRECT.

01:39:47 5 Q. AND THE NX-OS NETWORKING SOFTWARE, THAT'S THE SOFTWARE
01:39:50 6 THAT RUNS INSIDE THE NEXUS PRODUCTS YOU TALKED ABOUT THIS
01:39:54 7 MORNING, CORRECT?

01:39:55 8 A. YES, IT IS, IT'S ONE OF THEM.

01:39:57 9 Q. OKAY. AND COULD WE HIGHLIGHT THERE THE SECOND MIDDLE
01:40:00 10 COLUMN DOWN NEAR THE BOTTOM.

01:40:03 11 THIS ONE SAYS, "FURTHERMORE, CISCO NX-OS OFFERS THE SAME
01:40:08 12 INDUSTRY STANDARD COMMAND LINE ENVIRONMENT THAT WAS PIONEERED
01:40:12 13 IN CISCO IOS SOFTWARE MAKING THE TRANSITION FROM CISCO IOS
01:40:17 14 SOFTWARE TO CISCO NX-OS SOFTWARE EASY."

01:40:20 15 THAT'S WHAT IT SAYS, CORRECT?

01:40:21 16 A. THAT'S WHAT IT SAYS.

01:40:22 17 Q. AND IT USES THAT SAME PHRASE WE SAW BEFORE, INDUSTRY
01:40:27 18 STANDARD COMMAND LINE ENVIRONMENT; RIGHT?

01:40:28 19 A. YES, IT DOES.

01:40:29 20 Q. AND THERE ARE DOZENS AND DOZENS OF THESE DATA SHEETS THAT
01:40:33 21 SAY THAT VERY SAME THING, MR. CHAMBERS, AREN'T THERE?

01:40:36 22 A. I HAVE NO REASON TO DOUBT THAT YOU SAY.

01:40:39 23 Q. AND THE REASON FOR THAT IS THAT CISCO WAS PROMOTING ITS
01:40:45 24 CLI AS INDUSTRY STANDARD SO THAT CUSTOMERS WOULD FEEL
01:40:50 25 COMFORTABLE BUYING CISCO PRODUCTS AND GETTING TRAINED SO THEY

01:40:56 1 COULD USE THAT TRAINING TO BUY ANY SWITCH IN THE MARKET; RIGHT?

01:41:01 2 A. NO, WRONG.

01:41:03 3 Q. OKAY. LET ME -- LET ME MOVE ON: YOU WILL HAVE A CHANCE

01:41:08 4 WITH MR. DESMARAIS HERE.

01:41:12 5 NOW ISN'T IT THE CASE, MR. CHAMBERS, THAT BY 2010 WHEN

01:41:17 6 THAT *NETWORK WORLD* ARTICLE CAME OUT, EVERYBODY IN THE

01:41:20 7 NETWORKING INDUSTRY WAS AWARE THAT MANY VENDORS USED A CLI THAT

01:41:27 8 RESEMBLED CISCO'S? WASN'T THAT KNOWN WIDELY?

01:41:31 9 A. I WOULD HAVE NO IDEA ON THAT.

01:41:33 10 Q. LET'S TAKE A LOOK AT EXHIBIT 5416, THAT'S THE NETWORK

01:41:36 11 WORLD ARTICLE WE LOOKED AT THIS MORNING. THANKSGIVING THE ONE

01:41:45 12 THAT ANNOUNCED THE RESULTS OF THE TEST BETWEEN CISCO, ARISTA

01:41:48 13 AND OTHERS.

01:41:49 14 AND I WILL ASK MR. DAHM TO GOES DOWN SIX PAGES IN

01:41:57 15 MANAGEMENT AND USABILITY. MR. CHAMBERS, IT'S IN THERE BUT YOU

01:42:03 16 WILL SEE IT ON THE SCREEN MORE QUICKLY.

01:42:06 17 A. ALL RIGHT. JUST GIVE ME A SECOND. YOU SAID ABOUT SIX

01:42:12 18 PAGES IN?

01:42:12 19 Q. IT'S RIGHT UNDER THE TITLE. IT SAYS "MANAGEMENT AND

01:42:16 20 USABILITY?"

01:42:17 21 A. I'VE GOT IT.

01:42:18 22 Q. OKAY. LET'S BLOW UP THAT FIRST SENTENCE.

01:42:21 23 NOW AGAIN, THIS WAS A PUBLICATION THAT FOLKS IN THE

01:42:26 24 NETWORKING INDUSTRY READ; RIGHT, MR. CHAMBERS?

01:42:29 25 A. THAT IS CORRECT.

01:42:29 1 Q. ARE YOU WITH ME?

01:42:30 2 A. YES.

01:42:32 3 Q. AND WIDELY CIRCULATED WITHIN NETWORKING?

01:42:34 4 A. UH-HUH.

01:42:34 5 Q. SOMETHING YOU RESPECTED BECAUSE YOU GAVE INTERVIEWS?

01:42:38 6 A. CORRECT.

01:42:39 7 Q. OKAY. AND FROM TIME TO TIME YOU READ IT TOO?

01:42:42 8 A. CORRECT.

01:42:43 9 Q. SO THIS SAYS, "FOR MOST SWITCHES TESTED," THIS IS THE SAME
01:42:46 10 TEST WE TALKED ABOUT THIS MORNING, "THE MAIN QUESTION WHEN IT
01:42:50 11 COMES TO USABILITY IS, CAN YOU SPEAK IOS?"

01:42:54 12 THAT'S ACTUALLY IN QUOTES, DO YOU SEE THAT?

01:42:57 13 A. I SEE THAT, YES.

01:42:58 14 Q. OKAY. EVERY SWITCH TESTED, EXCEPT EXTREMES, HAS A
01:43:03 15 COMMAND-LINE INTERFACE THAT RESEMBLES CISCO?

01:43:10 16 A. THAT'S WHAT THEY ARE REPORTING.

01:43:13 17 Q. AND THEY REPORTED THAT EVERY SINGLE SWITCH THEY TESTED,
01:43:16 18 WITH ONE EXCEPTION, HAD A COMMAND-LINE INTERFACE THAT RESEMBLED
01:43:20 19 CISCO; THAT'S WHAT THIS IS REPORTING, RIGHT?

01:43:22 20 A. THAT'S WHAT THIS SAYS.

01:43:23 21 Q. AND THEY GO ON TO SAY, "THAT'S A SMART DESIGN CHOICE,
01:43:26 22 CONSIDERING MORE NETWORK ENGINEERS ARE CONVERSANT IN IOS THAN
01:43:30 23 ANY OTHER ENVIRONMENT."

01:43:31 24 THAT'S WHAT THEY CONCLUDED; THAT'S THEIR CONCLUSION,
01:43:33 25 RIGHT?

01:43:34 1 A. THAT'S THEIR CONCLUSION, YES.

01:43:37 2 Q. NOW THIS PUBLICATION WAS AVAILABLE TO EVERYBODY, INCLUDING
01:43:40 3 ALL THE FOLKS THAT CISCO THAT WERE INVOLVED IN THE COMPETITION
01:43:43 4 WITH ARISTA; RIGHT?

01:43:44 5 A. THAT IS TRUE.

01:43:47 6 Q. YOU HAVE A COMPETITIVE ANALYSIS DEPARTMENT AT CISCO OR
01:43:53 7 MAYBE MANY OF THEM?

01:43:53 8 A. I THINK IT'S MORE THE ENGINEERS DO THEIR OWN COMPETITIVE
01:43:57 9 ANALYSIS, THERE'S OVERRIDING MARKETING GROUPS, SO IT'S
01:44:00 10 THROUGHOUT THE ORGANIZATION.

01:44:01 11 Q. YOU ARE CERTAIN, AREN'T YOU, THAT THEY WERE LOOKING
01:44:04 12 CLOSELY AT ARISTA AND TESTING THE ARISTA PRODUCTS TOO?

01:44:06 13 A. FOR THE GROUPS THAT WERE FOCUSED ON SOFTWARE DEFINED
01:44:09 14 NETWORKING IN THIS GROUP OF PRODUCTS, YES.

01:44:10 15 Q. AND ANYBODY AT CISCO THAT WAS CONDUCTING THAT TESTING,
01:44:13 16 THEY WOULD KNOW EXACTLY WHAT COMMAND-LINE INTERFACE ARISTA WAS
01:44:15 17 USING, WOULDN'T THEY?

01:44:19 18 A. THEY WOULD KNOW THAT THEY USED A COMMAND-LINE INTERFACE,
01:44:23 19 THAT IS ONE OF TWO STANDARDS IN THE INDUSTRY. WOULD THEY KNOW,
01:44:27 20 AND IN MY OPINION, DID ANYONE KNOW THAT WHAT THEY WERE USING
01:44:31 21 WAS CISCO'S PROPRIETARY COMMAND-LINE INTERFACE, WITH OUR
01:44:36 22 COMMANDS, WITH OUR BROCHURES, WITH OUR HIERARCHIES, ET CETERA,
01:44:43 23 AND HELP SCREENS. SO NOW, I WOULD NOT SAY THEY WERE USING
01:44:46 24 CISCO'S.

01:44:46 25 Q. BUT YOUR CLI AND ARISTA'S CLI AND EVERYBODY'S CLI, THOSE

01:44:51 1 ARE PUBLICLY AVAILABLE, YOU CAN GO ON A WEBSITE AND LOOK AT
01:44:58 2 ANYONE'S COMMANDS; RIGHT?

01:44:59 3 A. I'M NOT AN ENGINEER. THAT'S SOMETHING THAT PROBABLY
01:45:02 4 SOMEBODY ELSE WOULD TECHNICALLY SAY, CAN YOU DRAW A CORRELATION
01:45:05 5 FROM THAT.

01:45:06 6 Q. I WILL LET YOU OFF THE HOOK ON THAT ONE.

01:45:09 7 NOW YOU MENTIONED HUAWEI BRIEFLY, YOU KNOW WHO CHARLIE
01:45:12 8 GIANCARLO IS?

01:45:13 9 A. YES. GOOD MAN.

01:45:14 10 Q. HE USED TO WORK FOR YOU. HE WAS A SENIOR ENGINEER AT
01:45:21 11 CISCO FOR MANY YEARS?

01:45:22 12 A. YES.

01:45:23 13 Q. HE WAS SENIOR EXECUTIVE, I BELIEVE CHIEF TECHNOLOGY
01:45:25 14 OFFICER AT ONE POINT?

01:45:26 15 A. PROBABLY.

01:45:27 16 Q. NOW HE TESTIFIED EARLIER LAST WEEK THAT HE WAS THE
01:45:29 17 BUSINESS EXECUTIVE RESPONSIBLE FOR THE HUAWEI LITIGATION.

01:45:32 18 DO YOU HAVE ANY REASON TO DOUBT THAT?

01:45:34 19 A. I DON'T KNOW THAT WE DESIGNATED HIM AS AN EXEC. HE WAS
01:45:41 20 ONE OF THE PEOPLE WHO FOCUSED ON THE HUAWEI LITIGATION.

01:45:44 21 Q. AND HE SAID HE WAS A PROPONENT OF THE LAWSUIT?

01:45:46 22 A. YES, HE WAS.

01:45:47 23 Q. OKAY. AND HE MENTIONED THAT HE MADE AT LEAST TWO TRIPS TO
01:45:52 24 CHINA TO TALK WITH HUAWEI ABOUT THEIR USE OF CISCO TECHNOLOGY.

01:45:56 25 IS THAT CONSISTENT WITH YOUR RECOLLECTION TOO?

01:45:58 1 A. I DO NOT REMEMBER THAT AT ALL. IT'S POSSIBLE IT MAY BE.

01:46:03 2 I DON'T KNOW IF I REMEMBER IT.

01:46:04 3 Q. BUT YOU WOULD TRUST MR. GIANCARLO IF HE SAID HE MADE A

01:46:08 4 COUPLE OF TRIPS TO CHINA AS A CISCO EXECUTIVE. YOU DON'T HAVE

01:46:11 5 ANY REASON TO QUESTION THAT, DO YOU?

01:46:12 6 A. I DON'T HAVE ANY REASON TO QUESTION HE MADE TRIPS TO

01:46:17 7 CHINA, I WAS NOT AWARE THAT HE TALKED TO HUAWEI EXECUTIVES ON

01:46:21 8 CLI.

01:46:21 9 Q. OKAY. WHAT HE TESTIFIED TO WAS THAT HE TRIED TO RESOLVE

01:46:24 10 THE ISSUE THROUGH NEGOTIATION AND COMPROMISE EVEN THOUGH THE

01:46:30 11 CLAIM WAS THAT HUAWEI HAD COPIED SOURCE CODE IN THE PRODUCT.

01:46:34 12 IS THAT CONSISTENT WITH YOUR RECOLLECTION TOO?

01:46:37 13 A. I DON'T KNOW THAT HE TRIED TO RESOLVE IT WITH HUAWEI. I

01:46:40 14 CAN'T COMMENT ON THAT ONE WAY OR THE OTHER, BUT HUAWEI DID COPY

01:46:44 15 OUR SOURCE CODE AS WELL, YES.

01:46:45 16 Q. THEY COPIED YOUR SOURCE CODE, AND EVENTUALLY THERE WAS A

01:46:47 17 COMPROMISE, BUT YOU HAD TO FILE A LAWSUIT FIRST; RIGHT?

01:46:51 18 A. (REDACTED)

01:47:00 19 Q. ACTUALLY, MR. CHAMBERS, THE JURY HAS ALREADY SEEN THERE

01:47:03 20 WAS A SETTLEMENT AGREEMENT BETWEEN THE COMPANIES, SO THEY HAVE

01:47:05 21 THAT INFORMATION.

01:47:06 22 NOW, I THINK YOU DESCRIBED MS. ULLAL AS A GOOD PERSON.

01:47:11 23 A. YES, SHE IS. I LIKE HER.

01:47:13 24 Q. AND SHE'S A GOOD FRIEND OF YOURS?

01:47:16 25 A. SHE IS A GOOD FRIEND, YES.

01:47:18 1 Q. AND SHE WAS A LONG TIME EXECUTIVE AT CISCO; RIGHT?

01:47:21 2 A. SHE KNEW OUR CULTURE VERY WELL.

01:47:24 3 Q. YOU SAID THIS MORNING THERE WERE 180 OR 190 ACQUISITIONS
01:47:28 4 WHILE YOU WERE CEO?

01:47:29 5 A. 180 WHEN I WAS CEO, PROBABLY ABOUT 190 TO 197 NOW.

01:47:34 6 Q. AND THOSE ACQUISITIONS, GENERALLY, THAT'S WHEN YOU GO
01:47:36 7 OUTSIDE CISCO TO GET TECHNOLOGY THAT YOU DON'T HAVE INSIDE THE
01:47:39 8 COMPANY; RIGHT?

01:47:39 9 A. RIGHT, TALENT YOU DON'T HAVE.

01:47:42 10 Q. AND THE MS. ULLAL CAME TO CISCO THAT WAY, YOU ACQUIRED A
01:47:48 11 COMPANY SHE WAS WORKING WITH AT THE TIME?

01:47:49 12 A. THAT WAS CRESCENDO.

01:47:51 13 Q. THAT'S RIGHT. AND THAT CRESCENDO PRODUCT BECAME A BIG
01:47:54 14 SELLER TOO?

01:47:55 15 A. YES.

01:47:55 16 Q. CATALYST?

01:47:56 17 A. YES.

01:47:56 18 Q. VERY SUCCESSFUL.

01:47:58 19 AND MS. ULLAL CONTINUED RUNNING THAT AS A CISCO EXECUTIVE
01:48:02 20 BECAUSE SHE HAD BEEN WORKING ON IT AT CRESCENDO BEFORE YOU
01:48:04 21 ACQUIRED THAT COMPANY, CORRECT?

01:48:06 22 A. I THINK THAT'S PROBABLY TOO SIMPLE A CORRELATION. WE
01:48:09 23 BROUGHT OVER A TEAM OF ABOUT FOUR OR FIVE KEY PEOPLE HEADED BY
01:48:13 24 MARIO AND LUCA AND PRIM AND SUNNY. SO PROBABLY FOUR OR FIVE IN
01:48:18 25 THE GROUP. MARIO IS THE GROUP LEADER.

01:48:21 1 Q. SO MS. ULLAL, SHE RAN IT ALONG WITH OTHER PEOPLE, THAT'S A
01:48:24 2 FAIR STATEMENT?

01:48:24 3 A. THAT'S A FAIR STATEMENT, YES.

01:48:26 4 Q. NOW MR. BECHTOLSHEIM, HE ALSO CAME THROUGH A DIFFERENT
01:48:29 5 ACQUISITION, RIGHT?

01:48:30 6 A. THROUGH GRANITE.

01:48:31 7 Q. RIGHT. GRANITE WAS ANOTHER COMPANY YOU ACQUIRED AND
01:48:34 8 THAT'S HOW MR. BECHTOLSHEIM BECAME A CISCO EXECUTIVE; RIGHT?

01:48:37 9 A. THAT'S CORRECT.

01:48:37 10 Q. HE WAS ALREADY A CELEBRATED PERSON, HE WAS A COFOUNDER OF
01:48:42 11 SUN, SO HE WAS ALREADY A WELL KNOWN ENGINEER IN THE VALLEY
01:48:45 12 BEFORE YOU ACQUIRED GRANITE WHICH WAS HIS COMPANY AT THE TIME;
01:48:49 13 RIGHT?

01:48:49 14 A. THAT IS CORRECT.

01:48:49 15 Q. NOW I THINK YOU SAID THAT MS. ULLAL CONTRIBUTED TO CISCO
01:48:55 16 AND ITS SUCCESS?

01:48:56 17 A. YES, SHE DID.

01:48:57 18 Q. AND SHE HAD RESPONSIBILITIES AS A CISCO EXECUTIVE FOR
01:49:02 19 VARIOUS PRODUCT LINES WHILE SHE WAS THERE?

01:49:05 20 A. THAT'S CORRECT.

01:49:06 21 Q. I THINK YOU CALLED HER ONE OF THE TOP WOMEN IN
01:49:09 22 ENGINEERING?

01:49:10 23 A. IN OUR ENGINEERING GROUP, SHE WAS.

01:49:11 24 Q. AND AFTER SHE LEFT, SHE LEFT ON GOOD TERMS; RIGHT?

01:49:14 25 A. YES, SHE DID.

01:49:15 1 Q. YOU THROUGH HER A PARTY?

01:49:16 2 A. YES, WE DID.

01:49:18 3 Q. YOU HAD A BIG PRESS RELEASE?

01:49:19 4 A. I GAVE HER A GOOD TOAST.

01:49:20 5 Q. OKAY. AND THEN YOU TWO STAYED IN TOUCH; RIGHT?

01:49:23 6 A. WE TEXTED AND WOULD TALK OVER TIME.

01:49:27 7 Q. SHE TEXTED YOU ON YOUR BIRTHDAY, FOR EXAMPLE. YOU TALKED

01:49:30 8 ABOUT -- YOU SHARED FAMILY INFORMATION AND TALKED OCCASIONALLY

01:49:33 9 FROM TIME TO TIME?

01:49:34 10 A. THAT IS CORRECT.

01:49:35 11 Q. AND YOU CONSIDERED HER A FRIEND THROUGHOUT THAT TIME?

01:49:37 12 A. YES, I DID.

01:49:37 13 Q. BUT I TAKE IT, MR. CHAMBERS, AS YOU TOLD US THIS MORNING,

01:49:41 14 YOU DIDN'T PICK UP THE PHONE AND CALL HER BEFORE THIS LAWSUIT

01:49:44 15 WAS FILED; RIGHT?

01:49:45 16 A. THAT IS CORRECT.

01:49:46 17 Q. IN FACT, WHAT YOU DID WAS YOU FILED THE LAWSUIT AND A

01:49:52 18 PRESS RELEASE THE SAME DAY?

01:49:53 19 A. THAT IS CORRECT.

01:49:53 20 Q. AND NOBODY FROM CISCO CONTACTED ANYONE FROM ARISTA TO

01:49:58 21 COMPLAIN ABOUT THEIR CLI BEFORE THIS LAWSUIT WAS FILED; ISN'T

01:50:01 22 THAT RIGHT?

01:50:01 23 A. THAT IS PROBABLY CORRECT.

01:50:03 24 Q. DO YOU KNOW HOW LONG ARISTA HAS BEEN OUT USING ITS CLI AND

01:50:11 25 REFERRING TO IT AS CISCO-LIKE; DO YOU HAVE ANY IDEA HOW LONG

01:50:15 1

THAT'S BEEN?

01:50:16 2

A. THE DATE THE FIRST TIME I BECAME AWARE OF IT WAS SPRING OF

01:50:21 3

2014. SO I DON'T KNOW THE OTHER PART OF THE QUESTION IN TERMS

01:50:23 4

OF DATES.

01:50:23 5

Q. WOULD YOU BE SURPRISED TO LEARN THAT ARISTA HAS BEEN USING

01:50:27 6

THE CLI SINCE 2008 WHEN THEY FIRST LAUNCHED THEIR PRODUCT?

01:50:32 7

A. WOULD I BE SURPRISED THAT THEY ARE USING THE MAJORITY OF

01:50:37 8

OUR COMMANDS, ET CETERA, FROM 2008? YES, I WOULD, ABSOLUTELY.

01:50:42 9

Q. SO --

01:50:44 10

A. AND OUR PATENTS.

01:50:45 11

Q. SO MR. CHAMBERS, I TAKE IT EVEN THOUGH YOU AND CISCO

01:50:50 12

CONTENDED THAT HUAWEI SLAVISHLY COPIED SOURCE CODE, YOU TREATED

01:50:54 13

HUAWEI BETTER THAN ARISTA; ISN'T THAT RIGHT?

01:50:58 14

A. NO, WE WERE VERY FIRM ON BOTH. I'M VERY COMFORTABLE WITH

01:51:04 15

HOW WE COMPETE AND VERY COMFORTABLE WITH OUR DECISIONS HERE.

01:51:07 16

MR. VAN NEST: I HAVE NO FURTHER QUESTIONS,

01:51:08 17

YOUR HONOR.

01:51:08 18

THE COURT: THANK YOU.

01:51:09 19

MR. DESMARAIS, REDIRECT?

01:51:11 20

MR. DESMARAIS: YES, YOUR HONOR.

01:51:11 21

THANK YOU.

01:51:50 22

THE WITNESS: LONG DAYS.

01:51:51 23

THE COURT: YES.

01:51:15 24

REDIRECT EXAMINATION

01:51:52 25

BY MR. DESMARAIS:

01:51:52 1 Q. HELLO AGAIN, MR. CHAMBERS.

01:51:58 2 A. HELLO.

01:51:59 3 Q. LET ME JUST ASK YOU A FEW THINGS.

01:52:02 4 A. SURE.

01:52:03 5 Q. FIRST OF ALL, PICKING UP ON ONE OF THE LAST TOPICS, THE
01:52:09 6 HUAWEI LITIGATION, AND WE LOOKED AT TRIAL EXHIBIT 4671, IF YOU
01:52:14 7 COULD LOOK IN YOUR BOOK THAT I GAVE YOU THIS MORNING?

01:52:23 8 A. THIS ONE?

01:52:25 9 Q. YES. THIS IS THE TRIAL EXHIBIT 4671, IT IS THE ACTUAL
01:52:31 10 COMPLAINT FROM THE HUAWEI LITIGATION; IS THAT RIGHT, SIR?

01:52:36 11 A. THAT IS CORRECT.

01:52:37 12 Q. AND IN YOUR TESTIMONY THIS MORNING YOU REVIEWED WITH THE
01:52:40 13 JURY THAT IN PARAGRAPH 15, THE CISCO CLI WAS SPECIFICALLY
01:52:43 14 CALLED OUT IN THE PUBLIC COMPLAINT AGAINST HUAWEI; DO YOU
01:52:46 15 RECALL TESTIFYING ABOUT THAT?

01:52:47 16 A. YES.

01:52:47 17 Q. AND WE LOOKED AT PARAGRAPH 17 WHICH TALKED AGAIN ABOUT
01:52:53 18 HUAWEI'S WHOLESALE COPYING OF THAT CLI; RIGHT?

01:52:56 19 A. YES.

01:52:56 20 Q. NOW IS THERE ANY DOUBT IN YOUR MIND THAT THE HUAWEI CASE
01:53:02 21 WAS ABOUT THE COPYING OF CISCO'S CLI?

01:53:10 22 A. IT WAS ONE OF THE KEY ELEMENTS, YES, AND IT WAS BOTH THE
01:53:12 23 PATENTS AND THE COPYRIGHT INFRINGEMENTS AS WELL. SO IT WAS THE
01:53:15 24 COMBINATION, JUST LIKE ARISTA.

01:53:17 25 MR. VAN NEST: OBJECTION. MOVE TO STRIKE,

01:53:18 1

YOUR HONOR.

01:53:25 2

THE COURT: OVERRULED.

01:53:28 3

BY MR. DESMARAIS:

01:53:28 4

Q. (REDACTED)

01:53:43 5

Q. AND NOW YOU WERE ASKED QUESTIONS ABOUT CISCO'S SALE

01:53:51 6

SHEETS; DO YOU RECALL THAT TESTIMONY ON CROSS-EXAMINATION?

01:53:53 7

A. YES.

01:53:54 8

Q. ASK THOSE WERE CISCO'S SALES SHEETS TO SELL CISCO

01:53:57 9

SWITCHES; RIGHT?

01:53:58 10

A. YES, THEY ARE.

01:53:59 11

Q. AND WHEN CISCO SELLS ITS SWITCHES, DOES IT USE THOSE SALES

01:54:05 12

SHEETS WITH CISCO CUSTOMERS?

01:54:07 13

A. SOMETIMES DO, SOMETIMES DON'T, DEPENDS ON THE SALES TEAM.

01:54:12 14

Q. AND MR. VAN NEST SHOWED YOU STATEMENTS IN THOSE SALES

01:54:18 15

SHEETS OF CISCO SELLING CISCO PRODUCTS TO CISCO CUSTOMERS THAT

01:54:21 16

USE TERMS ABOUT BEING AN INDUSTRY STANDARD AND CLI RESEMBLING

01:54:26 17

EARLIER CLI'S.

01:54:30 18

DID YOU SEE ANYWHERE IN ANY OF THOSE DOCUMENTS WHERE CISCO

01:54:33 19

SAID ITS PARTICULAR CLI COMMANDS WERE FREE FOR ALL TO COPY?

01:54:39 20

A. NO, AND THAT'S EXACTLY THE POINT.

01:54:41 21

Q. DID YOU SEE A DOCUMENT IN YOUR PREPARATION FOR YOUR

01:54:45 22

TESTIMONY OR IN YOUR ENTIRE TIME AT CISCO WHERE CISCO EVER TOLD

01:54:50 23

ANYBODY UNDER ANY CIRCUMSTANCES THAT THEIR COMMANDS, THE

01:54:56 24

SPECIFIC LANGUAGE THEY USE IN THE CISCO SWITCHES, WAS FREE TO

01:55:01 25

COPY?

01:55:02 1 A. NO, I DID NOT.

01:55:03 2 Q. DOES CISCO OBJECT IF A COMPETITOR USES A CLI-TYPE OF
01:55:09 3 INTERFACE WITH THEIR SWITCHES?

01:55:11 4 A. OF COURSE NOT. A LARGE NUMBER OF COMPANIES DO USE THAT OR
01:55:14 5 THE GRAPHIC CAPABILITY. THAT'S MORE JUST IN APPROACH TO THE
01:55:17 6 MARKET.

01:55:22 7 Q. NOW YOU WERE ASKED ABOUT INSIEME; DO YOU RECALL THAT ON
01:55:28 8 CROSS-EXAMINATION?

01:55:28 9 A. UH-HUH.

01:55:29 10 Q. LET'S TALK A LITTLE BIT ABOUT INSIEME. WHO SET UP
01:55:36 11 INSIEME?

01:55:38 12 A. THE CONCEPT WAS MY IDEA. IT WAS SET UP BY MARIO, PRIM,
01:55:44 13 LUCA AND SONNY, WE CAN IDENTIFY THEM BY FIRST NAME, A GROUP
01:55:48 14 THAT HAS DONE IT FOR ME TWO TIMES BEFORE.

01:55:51 15 SO WHEN WE NEED TO MOVE RAPIDLY IN AN AREA, WE USE THIS
01:55:55 16 TYPE OF CONCEPT, IT'S WORKED VERY WELL. WE CATCH UP OUR TO OUR
01:55:58 17 COMPETITION VERY WELL THAT WAY.

01:55:59 18 Q. SO LET'S JUST DRILL DOWN ON THAT VERY SPECIFICALLY SO THE
01:56:03 19 JURY UNDERSTANDS, MARIO, LUCA, PRIM AND SONNY WERE CISCO
01:56:07 20 EMPLOYEES; AM I RIGHT, SIR?

01:56:09 21 A. THEY HAD BEEN AT THIS TIME, I BROUGHT THEM BACK FROM
01:56:14 22 RETIREMENT.

01:56:14 23 Q. AND SO INSIEME WAS YOUR IDEA; RIGHT?

01:56:18 24 A. YES.

01:56:19 25 Q. RUN BY CISCO EMPLOYEES; RIGHT?

01:56:22 1 A. CISCO PAST EMPLOYEES AND CISCO FUTURE EMPLOYEES, CORRECT.

01:56:27 2 Q. AND DID YOU SET UP THE MILESTONES THAT THESE CISCO
01:56:31 3 EMPLOYEES WERE SUPPOSED TO MEET AT INSIEME?

01:56:35 4 A. THAT WAS ONE THAT OUR BUSINESS DEVELOPMENT GROUP IN
01:56:38 5 COMBINATION WITH THE INSIEME GROUP AGREED UPON, BUT I DID
01:56:42 6 REVIEW THE MILESTONES, YES.

01:56:43 7 Q. AND WHEN THEY ULTIMATELY HIT -- WHEN THE CISCO EMPLOYEES
01:56:51 8 RUNNING THE COMPANY ULTIMATELY HIT THE MILESTONES THAT YOU SET,
01:56:55 9 WHAT HAPPENED NEXT?

01:56:56 10 A. THAT COULD TRIGGER THAT THEY BECAME PART OF CISCO, WHICH
01:57:00 11 WAS OUR INTENTION FROM THE VERY BEGINNING.

01:57:02 12 Q. AND YOU WERE ASKED SOME QUESTIONS EARLIER ON IN YOUR
01:57:05 13 TESTIMONY ABOUT SALES SHEETS THAT YOU GOT FROM THE 2010, 2011
01:57:12 14 TIME PERIOD; DO YOU RECALL THOSE QUESTIONS?

01:57:13 15 A. YES, I DO.

01:57:14 16 Q. WHAT SWITCH WERE YOU SELLING IN THE 2010, 2011 TIME
01:57:18 17 PERIOD?

01:57:19 18 A. THE 7000.

01:57:20 19 Q. AND WHAT SWITCH DID YOU BEGIN SELLING AFTER THE INSIEME
01:57:24 20 SPIN IN?

01:57:24 21 A. OH, THE 9000.

01:57:26 22 Q. SO DID MR. VAN NEST SHOW YOU ANY SALES SHEETS ABOUT HOW
01:57:30 23 CISCO COMPETED AGAINST ARISTA ON THE NEXUS 9000 PRODUCT?

01:57:38 24 A. HE DID NOT.

01:57:43 25 Q. LET'S LOOK AT SLIDE, PLEASE, CHAMBERS 3.

01:57:57 1

IS THIS THE INSIEME SWITCH, SIR?

01:58:00 2

A. YES, IT IS. THEY ARE A FAMILY OF SWITCHES. THE BIG ONE,
THE MIDDLE SIZE AND THE LOWER ONES.

01:58:05 3

01:58:06 4

Q. AND DOWN AT THE BOTTOM WHERE IT SAYS, 2014 BEST OF
INTEROP, TELL US AGAIN WHAT THAT MEANS?

01:58:11 5

01:58:13 6

A. IT MEANS WE WERE THE TOP DATA CENTER SWITCH BEATING OUT
ARISTA AND OTHER COMPETITORS.

01:58:18 7

01:58:19 8

Q. WAS THE ARISTA SWITCH SPECIFICALLY CONSIDERED AT THAT
INTEROP SHOW?

01:58:21 9

01:58:22 10

A. YES, IT WAS.

01:58:22 11

Q. AND CISCO WON THAT COMPETITION; RIGHT?

01:58:24 12

A. YES, WE DID.

01:58:25 13

01:58:29 14

Q. IS THAT WHY MR. VAN NEST DIDN'T SHOW YOU ANY SALES SHEETS
ABOUT HOW WELL --

01:58:30 15

MR. VAN NEST: OBJECTION, YOUR HONOR. ARGUMENTATIVE.

01:58:33 16

THE COURT: SUSTAINED.

01:58:34 17

BY MR. DESMARAIS:

01:58:34 18

Q. HOW YOU ARE DOING TODAY ON A HEAD-TO-HEAD COMPARISON IS
ARISTA SWITCHES?

01:58:38 19

01:58:39 20

A. WE ARE WINNING A MUCH LARGER PERCENTAGE OF THE TIME.

01:58:48 21

Q. SO WOULD YOU SAY THAT YOUR INNOVATION AT CISCO WITH
DEVELOPMENT OF THE NEXUS 9000 SWITCH HAS BEEN SUCCESSFUL?

01:58:53 22

01:58:57 23

A. TREMENDOUSLY SUCCESSFUL. JUST TO SHARE THE DATA, WE GOT

01:59:01 24

APPROXIMATELY 9500 CUSTOMERS. ARISTA HAS ABOUT 4,000. WE HAVE

01:59:07 25

ABOUT AROUND \$2.4 BILLION GROWING DRAMATICALLY FASTER THAN

01:59:14 1

ARISTA HAS.

01:59:14 2

IT'S BEEN A TREMENDOUS SUCCESS. PROBABLY ONE OF THE BEST

01:59:17 3

FINANCIAL DECISIONS OR ACQUISITIONS AND R&D INVESTMENT WE'VE

01:59:21 4

MADE AS A COMPANY.

01:59:22 5

BUT AGAIN, THE SPINNING CONCEPT WORKS WELL FOR US ON

01:59:25 6

MARKETING TRANSITIONS.

01:59:26 7

Q. NOW NONETHELESS, YOU ARE PROUD IN THE NEXUS 9000 SWITCH

01:59:31 8

TECHNICALLY, AND YOU WON THE INTEROP COMPETITION WITH ARISTA,

01:59:35 9

ARE YOU STILL TODAY, LOSING SALES TO ARISTA IN THE MARKETPLACE?

01:59:38 10

MR. VAN NEST: OBJECTION, YOUR HONOR.

01:59:39 11

OUTSIDE THE SCOPE OF THE CROSS.

01:59:41 12

THE COURT: SUSTAINED.

01:59:45 13

MR. DESMARAIS: NO FURTHER QUESTIONS.

01:59:47 14

THE COURT: THANK YOU.

01:59:48 15

MR. VAN NEST, ANYTHING FURTHER FOR MR. CHAMBERS?

01:59:50 16

MR. VAN NEST: NO, YOUR HONOR. HE MAY BE EXCUSED.

01:59:52 17

THE COURT: MR. CHAMBERS, THANK YOU FOR YOUR

01:59:53 18

TESTIMONY. YOU ARE FREE TO GO.

01:59:54 19

THE WITNESS: YOUR HONOR, IT'S A PLEASURE. THANK YOU

01:59:57 20

TO THE JURY AND THANK YOU ALL.

01:59:58 21

THE COURT: MR. NELSON, YOUR NEXT WITNESS.

02:00:11 22

MR. NELSON: YOUR HONOR, WE DON'T HAVE ANY MORE

02:00:14 23

WITNESSES AT THIS POINT, SUBJECT TO THE AGREEMENT REGARDING THE

02:00:19 24

GENTLEMAN THAT'S GOING TO COME TOMORROW AFTERNOON.

02:00:21 25

THE COURT: ALL RIGHT. SO YOU ARE NOT TECHNICALLY

02:00:23 1 RESTING, BUT YOU ARE GOING TO TURN IT OVER TO MR. VAN NEST?

02:00:26 2 MR. NELSON: CORRECT, YOUR HONOR.

02:00:27 3 THE COURT: OKAY.

02:00:29 4 ALL RIGHT. MR. VAN NEST?

02:00:31 5 MR. VAN NEST: THANK YOU, YOUR HONOR.

02:00:33 6 YES, MR. SILBERT WILL BE PRESENTING KEN DUDA.

02:00:44 7 THE COURT: AND MR. DUDA, IF YOU WOULD COME FORWARD

02:00:46 8 TO THE WITNESS STAND, PLEASE AND STAND TO BE SWORN.

02:00:53 9 **(DEFENDANT'S WITNESS, KENNETH DUDA, WAS SWORN.)**

02:00:54 10 THE WITNESS: YES.

02:01:14 11 MR. SILBERT: I APOLOGIZE, YOUR HONOR. IF I MAY HAVE

02:01:16 12 ONE MOMENT.

02:01:16 13 THE COURT: PLEASE TAKE YOUR TIME. I JUST WANT TO

02:01:18 14 MAKE SURE THAT EASEL IS NOT TOO FAR AWAY FROM THE JURY.

02:01:23 15 SOMETIMES WE MOVE IT UP HERE TO THE VERY --

02:01:27 16 MR. VAN NEST: YOU WANT IT OVER HERE?

02:01:28 17 THE COURT: WELL, I WANT IT TO BE IN A PLACE WHERE

02:01:31 18 THE JURY CAN SEE IT, SO IT JUST DEPENDS ON HOW BIG YOU WRITE.

02:01:36 19 OKAY. THAT'S GOOD. THANK YOU.

02:01:40 20 **DIRECT EXAMINATION**

02:01:41 21 BY MR. SILBERT:

02:01:42 22 Q. GOOD AFTERNOON, MR. DUDA.

02:01:43 23 A. GOOD AFTERNOON.

02:01:44 24 Q. YOU'VE TESTIFIED PREVIOUSLY, BUT WOULD YOU PLEASE JUST

02:01:47 25 INTRODUCE YOURSELF TO THE JURY AGAIN?

02:01:49 1 A. YES. MY NAME IS KEN DUDA. I'M ONE OF THE FOUNDERS FOR
02:01:53 2 ARISTA NETWORKS.

02:01:54 3 Q. AND WOULD YOU TELL US A LITTLE BIT ABOUT YOUR FAMILY?

02:01:58 4 A. YES. I HAVE BEEN MARRIED FOR 23 YEARS, TO MY COLLEGE
02:02:03 5 SWEETHEART. WE HAVE TWO CHILDREN, TWO DAUGHTERS, AGES 10 AND
02:02:07 6 12.

02:02:07 7 Q. AND YOU SAID YOU ARE ONE OF THE FOUNDERS OF ARISTA, WHAT
02:02:10 8 IS YOUR CURRENT TITLE?

02:02:12 9 A. I'M THE COMPANY'S CHIEF TECHNOLOGY OFFICER, AND SENIOR
02:02:15 10 VICE PRESIDENT FOR SOFTWARE ENGINEERING.

02:02:17 11 Q. AND I WANT TO ASK YOU ABOUT YOUR EXPERIENCE WITH WRITING
02:02:22 12 SOFTWARE, AND YOU TESTIFIED WHEN YOU WERE HERE BEFORE THAT YOU
02:02:26 13 WROTE YOUR FIRST PARSER WHEN YOU WERE 12 YEARS OLD.

02:02:29 14 WHEN DID YOU FIRST START WRITING COMPUTER PROGRAMS?

02:02:33 15 A. I STARTED PROGRAMMING AT AGE 6.

02:02:36 16 Q. AND HOW DID THAT COME ABOUT?

02:02:39 17 A. MY FATHER WAS AN ARTIFICIAL INTELLIGENCE RESEARCHER AT
02:02:44 18 SRI, A RESEARCH INSTITUTE IN MENLO PARK. AND HE WOULD TAKE ME
02:02:48 19 IN AFTER HOURS TO USE THE DEC 10 MAINFRAME AT SRI. I LEARNED
02:02:55 20 PROGRAMMING BASIC.

02:02:56 21 Q. AND WHEN YOU WERE GROWING UP, HOW MUCH TIME DID YOU SPEND
02:03:01 22 PROGRAMMING?

02:03:02 23 A. OH, THROUGH MIDDLE SCHOOL AND JUNIOR HIGH SCHOOL, I LOVED
02:03:06 24 PROGRAMMING. I WOULD DO MY HOMEWORK IN ONE CLASS TO FREE UP
02:03:11 25 TIME TO PROGRAM WHEN I CAME HOME FROM SCHOOL.

02:03:13 1 SOMETIMES I WOULD GET UP ON A WEEKEND EARLY IN THE
02:03:17 2 MORNING, AND THE NEXT THING I KNEW, MY MOM WAS CALLING ME TO
02:03:21 3 DINNER, I WAS STILL IN MY PAJAMAS.

02:03:24 4 Q. OKAY. DID THERE COME A TIME WHEN YOU REALIZED THAT YOU
02:03:28 5 HAD A TALENT FOR WRITING COMPUTER PROGRAMS?

02:03:32 6 A. YEAH, WHEN I WAS MAYBE IN -- AROUND 11 YEARS OLD. I
02:03:37 7 ENTERED A PROGRAMMING COMPETITION AT A LOCAL SCHOOL INTENDED
02:03:40 8 FOR SLIGHTLY OLDER KIDS, SEVENTH, EIGHTH AND NINTH GRADERS, AND
02:03:45 9 I PLACED FIRST IN THAT COMPETITION.

02:03:46 10 Q. AND WHAT WAS THE CHALLENGE THAT WAS GIVEN TO THE
02:03:50 11 CONTESTANTS IN THAT COMPETITION?

02:03:52 12 A. WE WERE ASKED TO WRITE A COMPUTER PROGRAM TO TRANSLATE
02:03:55 13 ORDINARY NUMBERS INTO ROMAN NUMERALS.

02:03:58 14 Q. AND WERE YOU GIVEN A PARTICULAR AMOUNT OF TIME IN WHICH TO
02:04:02 15 COMPLETE THAT TASK?

02:04:03 16 A. WE WERE GIVEN 30 MINUTES.

02:04:05 17 Q. AND MR. DUDA, HOW LONG DID IT TAKE YOU AS AN 11-YEAR OLD
02:04:11 18 CHILD TO WRITE A PROGRAM TO CONVERT REGULAR NUMBERS INTO ROMAN
02:04:17 19 NUMERALS?

02:04:18 20 A. IT TOOK ME SEVEN MINUTES.

02:04:20 21 Q. WHEN DID YOU START SELLING, COMMERCIALY, COMPUTER
02:04:24 22 PROGRAMS THAT YOU HAD WRITTEN?

02:04:26 23 A. WHEN I WAS 14 I WROTE A BULLETIN BOARD PROGRAM FOR THE IBM
02:04:31 24 PC, WHICH I SOLD COMMERCIALY.

02:04:33 25 Q. AND MOVING AHEAD SOME IN TIME, WHERE DID YOU GET YOUR

02:04:40 1 COLLEGE AND POSTGRADUATE DEGREES?

02:04:43 2 A. I GOT THREE DEGREES IN ENGINEERING FROM MIT, AND A PH.D.
02:04:48 3 IN COMPUTER SCIENCE FROM STANFORD UNIVERSITY.

02:04:51 4 Q. OKAY. AND FOCUSING SPECIFICALLY NOW ON NETWORKING, HOW
02:04:57 5 DID YOU COME TO GAIN EXPERIENCE WITH NETWORKING SOFTWARE?

02:05:05 6 A. WELL, I DABBLED IN HIGH SCHOOL CREATING A NETWORK BETWEEN
02:05:08 7 MY COMPUTER AND MY FATHER'S COMPUTER.

02:05:11 8 I GOT A LITTLE MORE SERIOUS AS AN UNDERGRADUATE WHEN I
02:05:14 9 TAUGHT MYSELF NETWORK PROGRAMMING. I DID AN INTERNSHIP WITH A
02:05:17 10 COMPANY BUILDING TELEPHONE SWITCHES WHICH ARE A TYPE OF NETWORK
02:05:21 11 SWITCH.

02:05:22 12 AND THEN IN GRADUATE SCHOOL, I JOINED A RESEARCH GROUP IN
02:05:26 13 DISTRIBUTED SYSTEMS, WHICH OF COURSE COMMUNICATED VIA NETWORKS.
02:05:29 14 AND IN THAT GROUP, I WAS PARTLY RESPONSIBLE FOR TAKING CARE OF
02:05:32 15 OUR LOCAL NETWORK IN GAINING SOME HANDS-ON EXPERIENCE THERE.

02:05:36 16 Q. OKAY. WHAT WAS YOUR FIRST JOB AT AN ETHERNET SWITCH
02:05:39 17 COMPANY?

02:05:39 18 A. IT WAS GRANITE SYSTEMS, A STARTUP COFOUNDED BY
02:05:44 19 DAVID SHERATON AND ANDY BECHTOLSHEIM.

02:05:46 20 Q. AND WHAT DID YOU DO AT GRANITE?

02:05:49 21 A. I WAS THE FIRST SOFTWARE ENGINEER ON THE TEAM.

02:05:51 22 Q. AND WHAT TYPE OF PRODUCT DID GRANITE MAKE?

02:05:54 23 A. WE BUILT AN ETHERNET SWITCH, AND PARTICULARLY WE DESIGNED
02:05:59 24 THE FIRST GIGABIT ETHERNET SINGLE CHIP SWITCH.

02:06:03 25 Q. AND JUST, JUST ORIENT US IN TERMS OF TIME, WHAT YEAR ARE

02:06:07 1 YOU TALKING ABOUT NOW?

02:06:08 2 A. THAT WAS FROM APRIL OF 1995 UNTIL OCTOBER OF 2006.

02:06:13 3 Q. OKAY. SO YOU WERE AT GRANITE ABOUT --

02:06:17 4 A. SORRY, I THINK I GAVE THE WRONG DATES, SIR, 1995 TO ABOUT
02:06:23 5 1996, ABOUT ONE AND A HALF YEARS.

02:06:25 6 Q. OKAY. AND THEN WHERE DID YOU GO AFTER GRANITE?

02:06:27 7 A. WELL OUR COMPANY BUILT A PROTOTYPE, AND BASED ON THAT, WE
02:06:31 8 WERE ACQUIRED BY CISCO SYSTEMS IN OCTOBER OF 1996.

02:06:34 9 Q. AND SO DID YOU BECOME A CISCO EMPLOYEE BY VIRTUE OF THAT
02:06:39 10 ACQUISITION?

02:06:40 11 A. THAT'S RIGHT. I WORKED AT CISCO FOR TWO AND A HALF YEARS.

02:06:43 12 Q. AND WHY DID YOU LEAVE CISCO?

02:06:45 13 A. WELL, I FELT THE BIG COMPANY ENVIRONMENT WASN'T RIGHT FOR
02:06:50 14 ME. I WANTED TO TRY ANOTHER STARTUP.

02:06:52 15 Q. DID YOU GET AN OPPORTUNITY TO WORK AT A STARTUP AFTER YOU
02:06:56 16 LEFT CISCO?

02:06:56 17 A. I DID. I HAD TWO OPPORTUNITIES. I COULD JOIN A FRIEND
02:07:01 18 FROM STANFORD AT THERE.COM OR A DIFFERENT FRIEND FROM STANFORD
02:07:05 19 AT A SMALL STARTUP CALLED GOOGLE.

02:07:08 20 Q. OKAY. TELL ME ABOUT -- HOW DID THE OPPORTUNITY TO WORK AT
02:07:12 21 GOOGLE COME ABOUT AFTER YOU LEFT CISCO?

02:07:14 22 A. WELL, SERGEY BRIN WAS A FRIEND OF MINE FROM THE STANFORD
02:07:19 23 PROGRAM, AND HE TOOK ME TO THE ROOF OF THE STANFORD COMPUTER
02:07:22 24 SCIENCE BUILDING AND TYPED A PASSWORD INTO THIS WEBSITE CALLED
02:07:26 25 GOOGLE.COM, WHICH HE REVEALED A SEARCH ENGINE. AND HE

02:07:30 1 DEMONSTRATED TO ME THE SEARCH ENGINEER'S CAPABILITIES HOPING TO
02:07:33 2 CONVINCED ME TO JOIN GOOGLE.

02:07:35 3 Q. HE TOOK YOU TO THE ROOF OF THE SCIENCE BUILDING?

02:07:38 4 A. YES, HE DIDN'T WANT PEOPLE TO SEE WHAT HE WAS UP TO, SO HE
02:07:42 5 WENT THERE TO GET SOME PRIVACY.

02:07:44 6 Q. AND WHAT DID YOU TELL SERGEY -- FIRST OF ALL, HOW MANY
02:07:49 7 EMPLOYEES DID GOOGLE HAVE BACK AT THIS TIME?

02:07:51 8 A. FEWER THAN 20.

02:07:52 9 Q. AND WHAT DID YOU TELL SERGEY BRIN WHEN HE TRIED TO
02:07:57 10 CONVINCED YOU TO JOIN HIS SMALL STARTUP COMPANY GOOGLE?

02:08:00 11 A. WELL, I TOLD HIM THERE WAS NO WAY TO MAKE ANY MONEY IN
02:08:04 12 SEARCH, THAT BANNER ADS DIDN'T WORK, AND THAT IF THEY DID FIND
02:08:08 13 SOME WAY TO MAKE MONEY, THEN SURELY MICROSOFT WOULD REPLICATE
02:08:12 14 THE TECHNOLOGY, BUILD IT INTO THE BROWSER AND CUT THEM OUT OF
02:08:15 15 THE MARKET.

02:08:15 16 Q. SO YOU TOLD MR. BRIN THAT GOOGLE WOULD NOT BE A SUCCESS?

02:08:18 17 A. THAT'S RIGHT.

02:08:19 18 Q. AND BETWEEN GOOGLE AND THE OTHER SMALL STARTUP COMPANY
02:08:23 19 THAT YOU MENTIONED, WHICH OF THOSE DID YOU DECIDE TO GO WORK
02:08:27 20 FOR?

02:08:27 21 A. I PICKED THERE.COM OVER GOOGLE. AND I DON'T KNOW ANYBODY
02:08:30 22 WHO HAS MADE A BIGGER CAREER MISTAKE.

02:08:33 23 Q. AND JUST WHAT KIND OF COMPANY WAS THERE.COM?

02:08:38 24 A. WE WERE BUILDING A DISTRIBUTED VIRTUAL WORLD, A 3D
02:08:43 25 ENVIRONMENT, THAT YOU ACCESS ONLINE TO SOCIALIZE, PLAY GAMES

02:08:46 1 AND HANG OUT WITH FRIENDS.

02:08:48 2 Q. OKAY. AND SOME FOLKS ARE FAMILIAR WITH SOMETHING CALLED
02:08:51 3 SECOND LIFE, WAS IT SIMILAR TO THAT?

02:08:53 4 A. YES, WE REGARDED SECOND LIFE AS A SIMILAR PRODUCT.

02:08:57 5 Q. AND MAYBE YOU SAID THIS, BUT FOR HOW LONG WERE YOU AT
02:09:00 6 THERE.COM?

02:09:01 7 A. I WAS THERE FOR FIVE AND A HALF YEARS.

02:09:04 8 Q. AND WHAT DID YOU DO AFTER THERE.COM?

02:09:09 9 A. WELL, I LOOKED FOR A GOOD OPPORTUNITY, AND
02:09:15 10 ANDY BECHTOLSHEIM AND DAVID SHERATON WERE INTERESTED IN
02:09:18 11 STARTING ANOTHER COMPANY, SO I DECIDED TO START ARISTA ALONG
02:09:21 12 WITH THEM.

02:09:22 13 Q. OKAY. AND JUST AGAIN, FOR SAKE OF THE CHRONOLOGY, WHAT
02:09:26 14 YEAR WAS THAT?

02:09:27 15 A. THAT WAS 2004.

02:09:28 16 Q. NOW, AND YOU'VE MENTIONED ANDY BECHTOLSHEIM AND DAVID
02:09:33 17 SHERATON, HOW DID YOU KNOW DAVID SHERATON?

02:09:36 18 A. DAVID SHERATON WAS MY PH.D. ADVISOR AT STANFORD
02:09:42 19 UNIVERSITY.

02:09:42 20 Q. AND HOW DID YOU KNOW ANDY BECHTOLSHEIM?

02:09:44 21 A. DAVID INTRODUCED ME TO ANDY IN CONNECTION WITH GRANITE
02:09:48 22 SYSTEMS. DAVID AND ANDY WERE THE COFOUNDERS OF GRANITE.

02:09:52 23 I WORKED WITH ANDY FOR SEVERAL YEARS WHILE AT CISCO, AND
02:09:55 24 ANDY IS ONE OF THE SILICON VALLEY'S TRUE GENIUSES, IN MY
02:10:00 25 OPINION.

02:10:01 1 Q. SO WHEN YOU AND MR. BECHTOLSHEIM AND MR. SHERATON STARTED
02:10:05 2 ARISTA, DID YOU INTEND TO MAKE ETHERNET SWITCHES?

02:10:10 3 A. NO. OUR ORIGINAL PRODUCT WAS A VPN GATEWAY, A PRODUCT FOR
02:10:16 4 CREATING VIRTUAL PRIVATE NETWORKS ACROSS THE INTERNET.

02:10:19 5 Q. AND COULD YOU EXPLAIN JUST AT A HIGH LEVEL WHAT THAT
02:10:24 6 MEANS?

02:10:24 7 A. YES, SURE. COMPANIES BUILD NETWORKS THAT CONNECT THEIR
02:10:29 8 OFFICES TOGETHER, CONNECT THEIR OFFICES TO DATA CENTERS. AND
02:10:35 9 IN ORDER TO DO THAT THEY TYPICALLY LEASE CIRCUITS, LINES FROM
02:10:40 10 TELEPHONE PROVIDERS. WE THOUGHT IT MIGHT BE MORE COST
02:10:43 11 EFFECTIVE TO USE THE INTERNET INSTEAD, BUT PERHAPS THE INTERNET
02:10:45 12 IS NOT RELIABLE ENOUGH.

02:10:47 13 THE IDEA WAS BY USING MOBILE INTERNET CONNECTIONS
02:10:51 14 TOGETHER, YOU COULD BUILD A RELIABLE PRIVATE CONNECTION BETWEEN
02:10:54 15 YOUR COMPANY'S CAMPUSES.

02:10:56 16 Q. DID YOU ATTEMPT TO BUILD THAT VPN PRODUCT AT ARISTA?

02:11:00 17 A. WE DID. WE BUILT SOME SOFTWARE. I HAD A WORKING
02:11:05 18 PROTOTYPE.

02:11:05 19 Q. AND WHAT HAPPENED TO IT?

02:11:06 20 A. WELL, I LOOKED INTO THE MARKET OPPORTUNITY AND CAME TO THE
02:11:10 21 CONCLUSION THAT THE COSTS DIDN'T ACTUALLY MAKE SENSE, AND THE
02:11:14 22 ECONOMICS DIDN'T SUPPORT ANY MARKET FOR OUR PRODUCT.

02:11:18 23 Q. SO DID ARISTA DECIDE TO KILL THAT PRODUCT?

02:11:21 24 A. WE DID. WE CANCELLED THE PRODUCT AND WENT FOR ABOUT TWO
02:11:25 25 WEEKS WITHOUT ANY IDEA OF WHAT WE WERE GOING TO BUILD OR HOW WE

02:11:29 1 WOULD SURVIVE AS A COMPANY.

02:11:30 2 Q. OKAY. AND SO THEN WHAT HAPPENED AT ARISTA?

02:11:33 3 A. WELL, THEN ANDY BECHTOLSHEIM CAME AND CALLED A MEETING AND
02:11:37 4 SHOWED US A DESIGN HE HAD BEEN WORKING ON FOR A NEW NETWORK
02:11:41 5 SWITCH.

02:11:42 6 AND THE NUMBER OF INNOVATIONS IN THIS DESIGN, I ALMOST
02:11:47 7 CRIED, WE LOOKED AT EACH OTHER AND SAID, WE'VE GOT TO BUILD
02:11:50 8 THAT SWITCH.

02:11:51 9 Q. OKAY. AND JUST TELL US, AGAIN, AT A HIGH LEVEL, WHAT WAS
02:11:55 10 SO GOOD ABOUT IT?

02:11:55 11 A. OH, IT HAD SO MANY INNOVATIONS. THE WAY THAT IT MANAGES
02:12:01 12 TRAFFIC, TRAFFIC COMES IN ONE PORT, HAS TO GO OUT ANOTHER PORT.
02:12:06 13 IT NEEDS BANDWIDTH WITHIN THE SWITCH. HOW DO YOU ALLOCATE THAT
02:12:12 14 BANDWIDTH, WHAT DO YOU DO WITH THE PACKETS WHILE YOU ARE
02:12:14 15 WAITING FOR THAT BANDWIDTH TO BE AVAILABLE? THERE WERE
02:12:17 16 INNOVATIONS IN THE WAY THE FABRIC ARCHITECTURE WORKED TO MANAGE
02:12:20 17 THOSE TRAFFIC FLOWS.

02:12:21 18 IN ADDITION TO THAT WERE IMPROVEMENTS TO THE WAY THE
02:12:24 19 COMPONENTS WERE TO ARRANGE IN SPACE TO LET IT COOL THE SWITCH
02:12:27 20 BETTER, AND COOLING IS A BIG PROBLEM FOR BUILDING HIGHER
02:12:30 21 CAPACITY DEVICES.

02:12:31 22 Q. I WANT TO SHOW YOU DEMONSTRATIVE EXHIBIT 5594, AND ASK DO
02:12:42 23 YOU RECOGNIZE THIS?

02:12:43 24 A. YES.

02:12:44 25 Q. WHAT IS IT?

02:12:45 1 A. THIS IS A MOCKUP OF OUR 7500 SWITCH, THE SWITCH I WAS
02:12:49 2 REFERRING TO EARLIER.

02:12:50 3 Q. AND WHEN AT ARISTA DID YOU CREATE THIS STYROFOAM MOCKUP?

02:12:56 4 A. I BELIEVE WE CREATED IT IN 2006.

02:12:58 5 Q. AND USING THIS MOCKUP, CAN YOU GIVE THE JURY AN EXAMPLE OF
02:13:05 6 SOMETHING THAT MADE ARISTA'S DESIGN DIFFERENT FROM THE DESIGN
02:13:09 7 OF OTHER ETHERNET SWITCHES?

02:13:11 8 A. SURE. IF YOU LOOK AT THE BACK, YOU WILL SEE ALL THE
02:13:14 9 CIRCLES.

02:13:17 10 Q. YOU CAN TAKE IT UP THERE.

02:13:27 11 A. THIS IS THE FRONT OF THE SWITCH. LOTS OF PORTS TO PLUG IN
02:13:35 12 CONNECTIONS TO COMPUTERS.

02:13:40 13 IN THE BACK YOU SEE A WHOLE WALL OF FANS, THESE THINGS PUT
02:13:45 14 OUT A LOT OF AIR BECAUSE THAT'S REQUIRED TO COOL THE SWITCH.
02:13:50 15 THE OTHER DESIGNS PUT THE FANS ON THE SIDES.

02:13:53 16 THE PROBLEMS WITH FANS ON THE SIDES IS THEY DON'T COOL FUN
02:13:56 17 FORMALLY ACROSS THE SWITCH, WHICH THEN MEANS THAT SOME PORTS
02:13:59 18 WIND UP TOO HOT WHILE OTHERS HAVE MORE COOLING THAN THEY NEED.

02:14:04 19 WHAT ENABLES YOU TO PULL THE AIR THROUGH THE SWITCH THIS
02:14:06 20 WAY IS THAT IN PREVIOUS DESIGNS, PACKETS THAT COME IN ONE LINE
02:14:10 21 CARD HAVE TO TRAVEL ACROSS A BACK FAN TO GET DOWN TO ANOTHER
02:14:14 22 LINE CARD.

02:14:16 23 THAT BACK FAN BLOCKS THE AIRFLOW, AND YOU CAN'T JUST PUNCH
02:14:19 24 HOLES IN IT BECAUSE YOU NEED EVERY WIRE YOU CAN GET TO CARRY
02:14:23 25 THE PACKETS.

02:14:24 1 THIS SWITCH HAS NO BACK FAN. INSTEAD, EACH OF THESE UNITS
02:14:29 2 HERE IS A FABRIC CARD, IT'S A VERTICALLY MOUNTED CARD
02:14:35 3 CONNECTING WITH THE HORIZONTALLY MOUNTED LINE CARD IN THE
02:14:38 4 MIDDLE OF THE SWITCH.

02:14:38 5 THE PACKETS COME IN THE LINE CARD, GO THROUGH THE MIDDLE
02:14:52 6 OF THE SWITCH, ENTER A FABRIC CARD, TRAVEL ALONG THE FABRIC
02:14:54 7 CARD, GO BACK THROUGH THE MIDDLE OF THE SWITCH, AND OUT THE
02:14:58 8 LINE CARD.

02:14:59 9 REMEMBER THESE FABRIC CARDS ARE MOUNTED IN LIKE SO, SO
02:15:03 10 THAT THE AIR CAN FLOW RIGHT THROUGH THE MIDDLE OF THE SWITCH,
02:15:06 11 FIRST PASSING OVER ALL LINE CARDS, THEN PASSING BETWEEN ALL THE
02:15:10 12 FABRIC CARDS BEING BLOWN OUT THE BACK.

02:15:13 13 I HAD NEVER SEEN ANYTHING LIKE THIS BEFORE.

02:15:15 14 Q. I WILL TAKE THAT FROM. THANK YOU, MR. DUDA.

02:15:20 15 WHAT YOU'VE DESCRIBED, WAS THAT THE ONLY NEW IDEA IN THIS
02:15:24 16 SWITCH?

02:15:24 17 A. NO. WE HAD IDEAS FOR THE SOFTWARE AS WELL.

02:15:30 18 Q. AND WHAT WAS YOUR MAIN ROLE WITH RESPECT TO THE NEW SWITCH
02:15:34 19 THAT ARISTA WAS DESIGNING?

02:15:35 20 A. I WAS RESPONSIBLE FOR THE SOFTWARE, THE SOFTWARE
02:15:38 21 ARCHITECTURE AND GETTING THE SOFTWARE BUILT.

02:15:40 22 Q. AND WHAT DID THAT ENTAIL?

02:15:44 23 A. IT MEANT PLANNING HOW -- DESIGNING THE SWITCH SOFTWARE,
02:15:48 24 FIGURING OUT HOW TO CONSTRUCT THE SOFTWARE TO SUPPORT THE NEEDS
02:15:51 25 OF OUR TARGET CUSTOMERS WHICH WERE THE CLOUD CUSTOMERS.

02:15:55 1 Q. AND HOW LONG DID IT TAKE ARISTA TO BUILD THE SWITCH THAT
02:16:00 2 MR. BECHTOLSHEIM HAD ENVISIONED BACK IN THAT MEETING AFTER YOU
02:16:04 3 KILLED THE VPN PRODUCT?

02:16:06 4 A. IT TOOK NEARLY FIVE YEARS. WE DIDN'T DELIVER ANDY'S
02:16:10 5 VISION UNTIL 2010.

02:16:11 6 Q. AND WHY DID IT TAKE THAT LONG?

02:16:13 7 A. SWITCHES ARE COMPLICATED. THERE ARE SO MANY PIECES TO GET
02:16:17 8 RIGHT, SO MUCH THE SOFTWARE HAS TO DO TO MANAGE THE LINE CARDS
02:16:21 9 AND THE FABRIC CARDS TO CONFIGURE THE FABRIC, TO ESTABLISH
02:16:26 10 NETWORK CONNECTIONS WITH ADJACENT DEVICES, AND TO PROVIDE
02:16:29 11 VISIBILITY TO THE CUSTOMER TO MANAGE THE NETWORK. IT'S JUST A
02:16:33 12 LOT OF WORK.

02:16:34 13 Q. OKAY. AND HOW MUCH HAS ARISTA SPENT ON RESEARCH AND
02:16:38 14 DEVELOPMENT FROM THE TIME THAT IT WAS FOUNDED THROUGH TODAY?

02:16:42 15 A. WE'VE SPENT MORE THAN \$750 MILLION ON RESEARCH AND
02:16:47 16 DEVELOPMENT.

02:16:48 17 Q. I WANT TO ASK YOU ABOUT THE DESIGN OF ARISTA SWITCHES. IS
02:16:54 18 THERE SOME OVERARCHING FEATURE THAT DISTINGUISHES THE DESIGN OF
02:17:00 19 ARISTA SWITCHES?

02:17:01 20 A. WHAT'S MOST UNIQUE ABOUT OUR SWITCHES IS THE WAY WE BUILT
02:17:05 21 THEM FROM THE GROUND UP TO TARGET THE CLOUD NETWORKING MARKET,
02:17:08 22 THE NETWORKING FOR CLOUD COMPUTING.

02:17:10 23 Q. AND WOULD YOU PLEASE JUST EXPLAIN FOR THE JURY WHEN YOU
02:17:14 24 SAY "CLOUD NETWORKING," WHAT DO YOU MEAN BY THAT?

02:17:17 25 A. SURE. TRADITIONALLY, NETWORKING COMPANIES HAVE FOCUSED ON

02:17:21 1 ENTERPRISES WHICH ARE BIG COMPANIES LIKE BIG BANKS AND
02:17:25 2 INSURANCE COMPANIES THAT USE NETWORKS IN THEIR INTERNAL
02:17:27 3 OPERATIONS. BUT WHAT ARISTA SAW WAS COMING WAS THE RISE OF THE
02:17:32 4 BIG CLOUD COMPANIES, COMPANIES THAT RUN MASSIVE DATA CENTERS TO
02:17:37 5 SUPPORT NEW APPLICATIONS LIKE WEB SEARCH TO MILLIONS OF
02:17:40 6 MILLIONS OF PEOPLE.

02:17:41 7 Q. AND WHY DOES -- WHY DO CLOUD NETWORKS NEED THEIR OWN KIND
02:17:47 8 OF ETHERNET SWITCH?

02:17:49 9 A. YEAH. THERE ARE THREE BIG REASONS FOR THAT.

02:17:52 10 ONE IS THAT THE CLOUD NETWORKS REQUIRE A LOT OF EAST, WEST
02:17:58 11 BANDWIDTH BY WHICH WE MEAN BANDWIDTH FROM ONE SERVER TO ANOTHER
02:18:04 12 IN THE DATA CENTER.

02:18:06 13 THE SECOND REASON IS WHEN YOU ARE AT THAT KIND OF SCALE
02:18:08 14 BUILDING NETWORKS THAT LARGE, YOU NEED BETTER WAYS TO AUTOMATE.

02:18:12 15 AND THE THIRD REASON IS PROGRAMMABILITY. OUR CLOUD
02:18:15 16 CUSTOMERS BENEFIT FROM BEING ABLE TO ADD THEIR OWN SOFTWARE TO
02:18:18 17 OUR SWITCHES, WHICH IS SOMETHING NO OTHER SWITCHES AT THE TIME
02:18:21 18 ALLOWED.

02:18:22 19 Q. I WANT TO ASK YOU TO EXPLAIN EACH OF THOSE, AGAIN BRIEFLY.
02:18:28 20 BUT YOU REFER TO EAST WEST BANDWIDTH. WHAT DO YOU MEAN BY
02:18:33 21 THAT?

02:18:33 22 A. EAST WEST BANDWIDTH REFERS TO COMMUNICATION DIRECTLY
02:18:36 23 BETWEEN SERVERS IN A DATA CENTER. IF YOU THINK ABOUT OLD STYLE
02:18:45 24 NETWORKS, YOU CHECK YOUR BALANCE AT AN ATM MACHINE. WELL, THE
02:18:45 25 ATM MACHINE SENDS THE MESSAGE TO A SERVER, THE SERVER RESPONDS

02:18:50 1 WITH THE BALANCE. THERE'S NOT VERY MUCH BANDWIDTH REQUIRED.

02:18:53 2 BUT WHEN YOU SEARCH THE WEB, YOU SEND THAT SMALL SEARCH
02:18:58 3 REQUEST TO THE WEB SEARCH SERVER. AND THE AMOUNT OF INTERNAL
02:19:01 4 COMMUNICATION REQUIRED TO SEARCH THE WHOLE WEB AND RETURN THOSE
02:19:03 5 RESULTS RANKED BY IMPORTANCE WITH THE ADVERTISEMENTS INSERTED,
02:19:07 6 THERE'S A HUGE AMOUNT OF SERVER-TO-SERVER COMMUNICATION
02:19:10 7 REQUIRED TO THEN PROVIDE A FAIRLY SMALL RESPONSE BACK TO YOU.

02:19:14 8 AND OUR NETWORKS EXCEL AT PROVIDING THAT KIND OF
02:19:18 9 SERVER-TO-SERVER CONNECTIVITY.

02:19:20 10 Q. OKAY. YOU ALSO REFER TO THE SCALE OF CLOUD NETWORKS AND
02:19:24 11 THE NEED TO AUTOMATE. WHAT DID YOU MEAN BY THAT?

02:19:27 12 A. TRADITIONAL ENTERPRISES BUILD SMALL SCALE DEPLOYMENT OF
02:19:33 13 SPECIFIC APPLICATIONS. ORACLE DEPLOYMENT, PEOPLESOFT
02:19:38 14 DEPLOYMENT, EACH WITH A SMALL AMOUNT OF NETWORKING AND
02:19:42 15 COMPUTERS AND STORAGE HARDWARE.

02:19:43 16 TO SCALE UP APPLICATIONS TO SUPPORT MILLIONS OF USERS,
02:19:45 17 CLOUD CUSTOMERS BUILD VERY LARGE REGULAR NETWORKS, THE SAME
02:19:51 18 STRUCTURE STAMPED OUT OVER AND OVER AND OVER AGAIN.

02:19:53 19 AND THEN AT THAT SCALE, THEY NEED TO AUTOMATE THE
02:19:57 20 OPERATION OF THOSE NETWORKS. YOU CAN'T JUST HAVE A PERSON
02:20:00 21 CONFIGURE 10,000 SWITCHES. YOU NEED TO GET COMPUTERS TO DO THE
02:20:04 22 WORK OF MANAGING THE NETWORK AS WELL, WHICH MEANS THE SWITCHES
02:20:08 23 HAVE TO BE AMENABLE TO THAT SORT OF AUTOMATION.

02:20:11 24 Q. OKAY. AND THE THIRD POINT YOU MENTIONED WAS
02:20:13 25 PROGRAMMABILITY. WHAT DID YOU MEAN BY PROGRAMMABILITY IN THIS

02:20:17 1 CONTEXT?

02:20:17 2 A. PROGRAMMABILITY MEANS OUR CUSTOMERS CAN ADD THEIR OWN
02:20:21 3 SOFTWARE TO OUR SWITCHES, WHICH THEY USE TO CONTROL THE TRAFFIC
02:20:26 4 THROUGH THEIR NETWORKS WITH A GREATER DEGREE OF PRECISION THAN
02:20:30 5 IS POSSIBLE WITH STANDARD NETWORK CONTROL PLANE FUNCTIONS.

02:20:35 6 Q. OKAY. AND WHAT ROLE DO SWITCHES SPECIFICALLY PLAY IN A
02:20:40 7 CLOUD NETWORK?

02:20:41 8 A. THE SERVERS SIT IN SERVER RACKS, BIG STACKS OF SERVERS,
02:20:47 9 RACK, AFTER RACK, ROW AFTER ROW. AT THE TOP OF EACH RACK
02:20:50 10 TYPICALLY IS A NETWORK SWITCH WITH A CABLE TO EACH SERVER IN
02:20:54 11 THE RACK.

02:20:55 12 AND THEN FIBER OPTIC LINKS TO AGGREGATION SWITCHES SO THAT
02:21:00 13 COMPUTER COMMUNICATION TRAVELS FROM ONE SERVER TO THE TOP OF
02:21:04 14 RACK SWITCH TO THE AGGREGATION SWITCH, AND THEN TO ANOTHER RACK
02:21:08 15 OR POTENTIALLY ANOTHER DATA CENTER.

02:21:10 16 Q. OKAY. I WANT TO ASK YOU ABOUT SOME OF THE FEATURES OF
02:21:16 17 ARISTA SWITCHES, IN PARTICULAR. BUT BEFORE I DO THAT, IS THERE
02:21:20 18 ONE PARTICULAR FEATURE THAT MAKES ARISTA'S SWITCHES OPTIMIZED
02:21:26 19 FOR CLOUD NETWORKS?

02:21:29 20 A. WELL, I THINK OUR STATE ORIENTED -- OUR STATE SHARING
02:21:33 21 ARCHITECTURE IN THE SOFTWARE IS VERY IMPORTANT FOR THE
02:21:36 22 STRUCTURE OF OUR SWITCHES.

02:21:37 23 Q. OKAY. AND WE WILL TALK ABOUT THAT. AND DOES THE
02:21:42 24 IMPLEMENTATION OF THE FEATURES THAT YOU DESCRIBED IN SOFTWARE
02:21:46 25 HAVE AN EFFECT ON THE SUCCESS OF THOSE FEATURES?

02:21:50 1 A. ABSOLUTELY. WHEN YOU ARE IMPLEMENTING FEATURES, YOU MAKE
02:21:56 2 LOTS OF INDIVIDUAL DESIGN DECISIONS ABOUT THE DETAILS OF HOW
02:22:00 3 THE FEATURES WORK AND FIT TOGETHER WITH FEATURES.

02:22:03 4 GETTING THOSE DETAILS RIGHT IS REALLY IMPORTANT FOR A
02:22:05 5 SMOOTH FUNCTIONING WORK.

02:22:07 6 Q. WHAT ABOUT THE COMBINATION OF FEATURES, DOES THAT HAVE AN
02:22:10 7 AFFECT ON THE ULTIMATE USEFULNESS OF THE SWITCH?

02:22:12 8 A. ABSOLUTELY. TAKING JUST ONE OR TWO OF THESE INNOVATIONS
02:22:17 9 BY ITSELF DOESN'T FUNDAMENTALLY CHANGE THE WAY CLOUD NETWORKS
02:22:21 10 OPERATORS CAN OPERATE THEIR NETWORKS, IT'S THE COMBINATION OF
02:22:24 11 THESE FEATURES THAT'S BEEN SO POTENT IN THE MARKETPLACE.

02:22:27 12 Q. OKAY. THANK YOU.

02:22:27 13 AND NOW YOU MENTIONED STATE SHARING ARCHITECTURE, I'M
02:22:32 14 CERTAINLY GOING TO ASK YOU TO EXPLAIN THAT. BUT WHY DON'T WE
02:22:36 15 DO IT IN PIECES.

02:22:38 16 AND SO FIRST OF ALL, WHAT WAS THE OLD WAY OF DOING IT THAT
02:22:43 17 ARISTA DECIDED TO DO SOMETHING DIFFERENT FROM?

02:22:45 18 A. WELL, ORIGINALLY PEOPLE CONSTRUCTED MONOLITHIC STRUCTURES.
02:22:51 19 MONOLITHIC SWITCH OPERATING SYSTEMS, MEANING THE SWITCH
02:22:56 20 OPERATING SYSTEM IS JUST ONE BIG PROGRAM. THESE WERE VERY
02:22:59 21 ERROR PRONE. THE SMALLEST PROBLEM IN THE SOFTWARE CAUSED THE
02:23:02 22 WHOLE SWITCH TO CRASH.

02:23:04 23 SO THEN IN THE SECOND GENERATION SYSTEMS, PEOPLE DIVIDED
02:23:08 24 THE SOFTWARE UP INTO SEPARATE PROCESSES THAT COORDINATE BY
02:23:11 25 SENDING MESSAGES TO EACH OTHER, BUT THESE MESSAGE PASSING

02:23:14 1 SYSTEMS NEVER WORKED AS WELL AS PEOPLE HOPED.

02:23:17 2 Q. AND WHAT WAS THE PROBLEM WITH THE MESSAGE PASSING SYSTEMS?

02:23:20 3 A. WELL, MESSAGE PASSING SYSTEM HAS TWO MAIN PROBLEMS.

02:23:24 4 ONE IN RESTART ABILITY, AND ONE IN THE RATE MISMATCH. THE
02:23:29 5 DEADLY ONE IS THE RATE MISMATCH PROBLEM, WHICH IS WHEN ONE
02:23:33 6 PROCESS SENDS MESSAGES FASTER THAN THE RECIPIENT CAN HANDLE
02:23:37 7 THEM, A CUE BUILDS UP OF UNPROCESSED MESSAGES, IT GETS BIGGER
02:23:41 8 AND BIGGER.

02:23:42 9 THE BIGGER IT GETS, THE MORE WONKY THE SYSTEM BEHAVES
02:23:46 10 BECAUSE ONE PART IS RUNNING BEHIND ANOTHER PART.

02:23:48 11 IT CAN ONLY GET SO BIG. AT SOME POINT YOU RUN OUT OF
02:23:52 12 MEMORY AND THEN THE SWITCH CRASHES AND THAT'S THE LEVEL OF
02:23:56 13 RELIABILITY THAT WE NEEDED TO DO BETTER.

02:23:58 14 Q. OKAY. AND WOULD YOU PLEASE EXPLAIN WHAT ARISTA DID WITH
02:24:05 15 RESPECT TO STATE SHARING ARCHITECTURE, AND WE HAVE AN EASEL IF
02:24:10 16 IT WILL HELP YOU. WITH THE COURT'S PERMISSION, YOU CAN COME TO
02:24:12 17 THE EASEL AND DRAW A DIAGRAM.

02:24:24 18 A. WHEN YOU ARE DIVIDING A SWITCH OPERATING SYSTEM UP INTO
02:24:34 19 PROCESSES, WHAT WE DO IN ARISTA'S SOFTWARE, IS WE CREATE A
02:24:41 20 DATABASE PROCESS IN THE MIDDLE.

02:24:43 21 THE DATABASE PROCESS'S JOB IS TO HOLD ALL OF THE STATE OF
02:24:47 22 THE SWITCH. WHICH LINKS ARE UP, WHICH LINKS ARE DOWN, HOW HAS
02:24:52 23 THE SWITCH BEEN CONFIGURED, HOW MANY PACKETS HAVE BEEN RECEIVED
02:24:56 24 ON WHICH PORTS, INFORMATION ABOUT THE SWITCH'S NEIGHBORS IN THE
02:24:59 25 NETWORK AND WHAT ROUTES TO USE FOR WHAT TYPE OF TRAFFIC.

1 ALL OF THAT IS STORED IN THE SYSTEM DATABASE.

2 FOR EXAMPLE, IF WE HAVE ONE PROCESS TO MANAGE THE SWITCH'S
3 HARDWARE, AND ANOTHER PROCESS WHOSE JOB IS TO KEEP ALL OF THE
4 LINK STATUS INDICATORS, THE LITTLE STATUS LIGHTS ON THE FRONT
5 OF THE SWITCH, KEEP THEM THE RIGHT COLOR.

6 THEN WHEN WE DETECT THAT A LINK GOES DOWN HERE, WE WRITE
7 STATE INTO THE SYSTEM DATABASE SAYING THE LINK IS NOW DOWN.
8 THAT STATE UPDATE PROPAGATES TO ALL OF THE OTHER PROCESSES THAT
9 CARE ABOUT LINK STATUS, WHICH MOST DO, AND OUR LED AGENT, FOR
10 EXAMPLE, TURNS OFF THE LINK.

11 THIS MEANS THAT IF ONE OF THESE PROCESSES HAS A PROBLEM,
12 AND EXITS AND RESTARTS, IT CAN RECOVER ITS STATE FROM THE
13 SYSTEM DATABASE.

14 THE OTHER PROCESSES DON'T NEED TO KNOW THAT ANYTHING
15 HAPPENED, BECAUSE TO THEM, IT JUST LOOKS LIKE THE STATE
16 DATABASE IS BEING UPDATED A LITTLE MORE SLOWLY THAN YOU RECALL,
17 SO IT SOLVES THE PROBLEM OF COORDINATING THESE PROCESSES
18 WITHOUT INTRODUCING THE PROBLEMS OF MESSAGE PASSING.

19 Q. THANK YOU, MR. DUDA. YOU MAY RETURN TO THE STAND.

20 WHAT IS THE PRACTICAL RESULT OF THIS ARCHITECTURE THAT
21 YOU'VE DESCRIBED FOR ARISTA'S CUSTOMERS?

22 A. IT MEANS THAT OUR SWITCHES ARE MORE RELIABLE. IT GIVES --
23 CREATES A FRAMEWORK IN WHICH CUSTOMERS CAN ADD THEIR OWN
24 SOFTWARE, AND IT HELPS US CREATE FEATURES MORE QUICKLY AS WELL.

25 Q. HOW DOES IT HELP ARISTA CREATE FEATURES MORE QUICKLY?

02:26:53 1 A. WELL, WHEN YOU'RE ABLE TO CREATE A NEW FEATURE AS A
02:26:58 2 STAND-ALONE PROCESS, YOU CAN DEVELOP YOUR FEATURE IN ISOLATION
02:27:01 3 WITHOUT WORRYING ABOUT THE REST OF THE SOFTWARE ON THE DEVICE.
02:27:05 4 AND IT ALSO CREATES A BETTER WAY TO TEST YOUR FEATURE. YOU CAN
02:27:08 5 TEST THAT ONE FEATURE IN ISOLATION OF ALL THE OTHER PROCESSES
02:27:12 6 ON THE DEVICE.

02:27:14 7 IN THE ALTERNATIVE, IF YOUR FEATURE IS PART OF A LARGE
02:27:16 8 PROGRAM, THEN YOU NEED TO COMPILE THAT LARGE PROGRAM AND
02:27:21 9 DOWNLOAD IT ON TO A SWITCH, IT'S MUCH MORE CUMBERSOME.

02:27:24 10 Q. I SEE. AND HOW DOES THAT -- WHAT DOES THAT HELP ARISTA
02:27:29 11 DO?

02:27:30 12 A. WELL, IT HELPS US DELIVER MORE FEATURES MORE QUICKLY TO
02:27:35 13 OUR CUSTOMERS WHICH HELPS US ADDRESS MORE OF THEIR USE CASES
02:27:39 14 AND THEIR NEEDS FOR NETWORK DEVICES.

02:27:41 15 Q. OKAY. I WANT TO ASK YOU ABOUT A DIFFERENT TOPIC NOW.

02:27:44 16 DOES ARISTA'S EOS USE SOMETHING CALLED LINUX?

02:27:48 17 A. YES.

02:27:48 18 Q. AND WHAT IS LINUX?

02:27:51 19 A. LINUX IS AN OPEN SOURCE SERVER OPERATING SYSTEM WIDELY
02:27:55 20 USED BY CLOUD COMPUTING COMPANIES.

02:27:58 21 Q. AND WHAT IS AN OPERATING SYSTEM?

02:27:59 22 A. AN OPERATING SYSTEM IS THE LOWEST LEVEL SOFTWARE ON A
02:28:04 23 COMPUTER THAT MANAGES THE MOST BASIC FUNCTIONS OF THE COMPUTER.
02:28:08 24 ITS PROCESSOR, ITS MEMORY, AND ITS INPUT, OUTPUT DEVICES.

02:28:13 25 Q. ISN'T EOS ITSELF AN OPERATING SYSTEM?

02:28:16 1 A. EOS IS A NETWORK OPERATING SYSTEM THAT PERFORMS THOSE
02:28:20 2 BASIC FUNCTIONS. BUT IN ADDITION, IT COMMUNICATES WITH OTHER
02:28:28 3 THE DEVICES ON THE NETWORK AND ESTABLISHES COMMUNICATION PATHS
02:28:31 4 THROUGH THE NETWORK.

02:28:31 5 Q. SO HOW DOES ARISTA USE LINUX IN ITS EOS OPERATING SYSTEM?

02:28:35 6 A. EOS INCORPORATES LINUX. WE BUILD ON LINUX AS THE
02:28:40 7 FOUNDATION. LINUX MANAGES THE BASIC SYSTEM HARDWARE AND THEN
02:28:43 8 THE SOFTWARE WE ADD MANAGES THE NETWORKING RELATED FUNCTIONS.

02:28:50 9 Q. OKAY. AND HOW IS THAT DESIGN DIFFERENT FROM THE
02:28:56 10 TRADITIONAL SWITCH OPERATING SYSTEM DESIGNS?

02:28:58 11 A. FIRST GENERATION OF SWITCH OPERATING SYSTEMS WERE
02:29:01 12 MONOLITHIC, ONE BIG PROGRAM WITH NO OPERATING SYSTEM KERNEL AT
02:29:05 13 ALL. AND THESE PROVED TO BE VERY ERROR PRONE, AS I MENTIONED.

02:29:08 14 SECOND GENERATION OPERATING SYSTEMS WERE BASED ON SOME
02:29:11 15 KIND OF AN OPERATING SYSTEM KERNEL, BUT KEPT IT CLOSED. KERNEL
02:29:18 16 WAS TYPICALLY PROPRIETARY AND THEY DIDN'T ALLOW ANY THIRD PARTY
02:29:22 17 SOFTWARE TO BE INSTALLED INTO THE SWITCH ENVIRONMENT.

02:29:25 18 Q. WERE YOU PERSONALLY INVOLVED IN THE DECISION TO USE LINUX
02:29:29 19 IN EOS?

02:29:30 20 A. YES.

02:29:31 21 Q. AND AT THE TIME THAT YOU MADE THAT DECISION, WERE THERE
02:29:34 22 OTHER ETHERNET SWITCH VENDORS WHO ALSO BASED THEIR SWITCH
02:29:39 23 OPERATING SYSTEM ON LINUX?

02:29:40 24 A. NONE THAT WE KNEW OF AT THAT TIME.

02:29:43 25 Q. TO YOUR KNOWLEDGE, IS THERE ANY SWITCH VENDOR TODAY WHO

02:29:47 1 IMPLEMENTS LINUX IN THEIR OPERATING SYSTEM THE WAY THAT ARISTA
02:29:50 2 DOES?

02:29:51 3 A. I THINK THERE ARE OTHERS THAT USE LINUX IN SOME FORM, BUT
02:29:55 4 THEY HAVEN'T INCORPORATED IT IN THE SAME WAY WE HAVE AND
02:29:59 5 EXPOSED IT TO CUSTOMERS THE SAME WAY WE HAVE.

02:30:01 6 Q. AND PLEASE EXPLAIN WHAT YOU MEAN BY THAT TO THE JURY?

02:30:05 7 A. WELL, ONE OF THE KEY DECISIONS WE MADE EARLY ON WAS TO
02:30:10 8 OPEN OUR OPERATING SYSTEM, TO MAKE IT ACCESSIBLE TO OUR
02:30:13 9 CUSTOMERS, TO ENABLE OUR CUSTOMERS TO ADD THEIR OWN SOFTWARE TO
02:30:17 10 THE PRODUCT. AND AS FAR AS I KNOW, WE ARE THE ONLY COMPANY
02:30:19 11 THAT DOES THAT TODAY.

02:30:20 12 Q. AND WHAT DIFFERENCE DOES THAT MAKE FOR ARISTA'S CUSTOMERS?

02:30:24 13 A. WELL, FOR MOST TRADITIONAL ENTERPRISE CUSTOMERS, NO
02:30:27 14 DIFFERENCE AT ALL. THE BIG BANKS AND INSURANCE COMPANIES HAVE
02:30:31 15 NO INTEREST IN CREATING THEIR OWN SOFTWARE FOR NETWORK
02:30:34 16 SWITCHES.

02:30:35 17 BUT AGAIN, THE CLOUD CUSTOMERS, WHO HAVE A LOT OF
02:30:38 18 PROGRAMMERS ON STAFF, ARE ABLE TO TAKE ADVANTAGE OF THE
02:30:43 19 PROGRAMMABILITY OF OUR PLATFORM, THE EXTENSIBILITY AFFORDED BY
02:30:48 20 KEEPING THE LINUX ENVIRONMENT OPEN AND ADD THEIR OWN SOFTWARE
02:30:51 21 THAT ENHANCES THE WAY THEIR NETWORK WORKS.

02:30:54 22 Q. DOES USING LINUX ALSO HELP ARISTA DEVELOP NEW FEATURES?

02:30:58 23 A. YES, IT DOES.

02:30:59 24 Q. IN WHAT WAY?

02:31:01 25 A. OUR INTERNAL SERVERS RUN LINUX AS WELL. THE SAME LINUX

02:31:05 1 VARIANT RUNNING ON OUR SWITCHES. THAT ENABLES OUR ENGINEERS TO
02:31:09 2 DEVELOP SOFTWARE MORE EFFICIENTLY BECAUSE THEY DON'T NEED TO
02:31:14 3 COMPILE A LARGE IMAGE AND PUT IT ON TO A SWITCH.

02:31:18 4 Q. AND CAN YOU EXPLAIN THAT A LITTLE FURTHER, WHAT'S THE
02:31:21 5 DIFFERENCE BETWEEN DEVELOPING SOFTWARE IN A LINUX ENVIRONMENT
02:31:24 6 FOR A LINUX SWITCH VERSUS DEVELOPING IT IN SOME OTHER
02:31:27 7 ENVIRONMENT?

02:31:28 8 A. RIGHT. THE ADVANTAGE IS AS AN ENGINEER, THE TRADITIONAL
02:31:34 9 PROCESS, YOU ARE MAYBE CHANGING 50, 100, 200 LINES OF CODE.
02:31:40 10 YOU MAKE YOUR CHANGES. YOU HAVE TO COMPILE THE ENTIRE
02:31:44 11 OPERATING SYSTEM IN ORDER TO LOAD IT ON TO A SWITCH WHICH CAN
02:31:47 12 TAKE SEVERAL MINUTES TO SEE ANY EFFECT OF YOUR CHANGE.

02:31:50 13 AND IF YOU MADE A SMALL MISTAKE, YOU HAVE TO REPEAT THE
02:31:53 14 PROCESS AGAIN AND YOU REALLY GET SLOWED DOWN.

02:31:56 15 WHEREAS IN A LINUX ENVIRONMENT, AT ARISTA, OUR ENGINEERS
02:32:00 16 CAN MAKE THE CHANGES ON THEIR OWN DEVELOPMENT SERVER. AND THEN
02:32:05 17 COMPILE JUST THE PART THEY ARE WORKING ON AND RUN JUST THAT
02:32:08 18 PART RIGHT THERE ON THAT SAME SERVER.

02:32:11 19 AND I KNOW IT DOESN'T SOUND LIKE MUCH, BUT IT CAN SAVE A
02:32:14 20 TREMENDOUS AMOUNT OF TIME.

02:32:16 21 Q. OKAY. YOU MENTIONED PROGRAMMABILITY SOME, AND I WANT TO
02:32:23 22 TALK TO YOU ABOUT THAT.

02:32:25 23 FIRST OF ALL, WE HAVE BEEN TALKING ABOUT EOS. WHAT DOES
02:32:28 24 THE E STAND FOR IN EOS?

02:32:30 25 A. E STANDS FOR EXTENSIBLE.

02:32:32 1 Q. OKAY. AND IN WHAT WAY IS EOS EXTENSIBLE?

02:32:39 2 A. IT'S EXTENSIBLE IN THE WAY THAT WE ALLOW OUR CUSTOMERS TO
02:32:45 3 ADD SOFTWARE TO OUR SWITCHES.

02:32:47 4 AND I STILL REMEMBER THE AFTERNOON I WAS WALKING DOWN THE
02:32:51 5 STAIRS FROM OUR FIRST DEVELOPMENT OFFICE, WHICH WAS OUT MY
02:32:54 6 BEDROOM DOOR DOWN THE HALL TO THE LEFT, AND WE REALIZED IT
02:32:58 7 WOULD BE SO MUCH EASIER TO ADD SOFTWARE TO OUR SWITCH THAN ANY
02:33:00 8 SWITCH PRODUCT WE HAD SEEN BEFORE. WHY SHOULD WE BE THE ONLY
02:33:03 9 ONES DOING THIS, WHY NOT LEAVE IT OPEN TO ALL SORTS OF
02:33:08 10 DEVELOPERS.

02:33:08 11 Q. BUT WHY WOULD AN ARISTA CUSTOMER WANT TO ADD THEIR OWN
02:33:12 12 SOFTWARE TO AN ARISTA SWITCH?

02:33:13 13 A. WELL, IT'S A LITTLE BIT LIKE THE ORIGINAL IPHONE WAS
02:33:18 14 ACTUALLY A CLOSED SYSTEM. MAYBE MOST PEOPLE DON'T REMEMBER
02:33:21 15 THIS, BUT ORIGINALLY ALL IOS APPS CAME FROM APPLE. AND ONLY
02:33:27 16 LATER DID APPLE DECIDE TO OPEN UP THE IPHONE TO THIRD PARTY
02:33:32 17 DEVELOPMENT AND THE APP STORE.

02:33:33 18 AND YOU CAN SEE HOW THAT CHANGED THE WORLD WITH ALL THE
02:33:36 19 FUNCTIONS AND THE HUNDREDS OF THOUSANDS OF APPS THAT ARE NOW
02:33:40 20 AVAILABLE.

02:33:40 21 Q. AND IN THE CASE OF A NETWORK, AND SPECIFICALLY A CLOUD
02:33:45 22 NETWORK, WHAT WOULD A CUSTOMER WANT TO DO WITH AN APP THAT THE
02:33:48 23 CUSTOMER -- OR APPLICATION THAT THE CUSTOMER MIGHT WRITE AND
02:33:52 24 PUT ON TO AN ARISTA SWITCH?

02:33:53 25 A. THE CUSTOMER GAINS BETTER CONTROL OVER HOW THE SWITCH

02:33:57 1 WORKS. AND THIS IS VERY IMPORTANT FOR DELIVERING THE BEST
02:34:03 2 SERVICE TO THEIR END USERS, THEY NEED TO CONTROL THE FLOWS OF
02:34:07 3 PACKET TRAFFIC, WHICH TUNNELS AND PATHS THEY TAKE BETWEEN THE
02:34:12 4 DATA CENTERS OF THE CLOUD OPERATOR, BUT ALSO, THEY NEED TO
02:34:15 5 CONTROL HOW THE TRAFFIC MAKES IT FROM THE CLOUD OPERATOR'S DATA
02:34:19 6 CENTER TO THE CARRIER'S HANDOFF POINT, WHETHER THAT'S AT&T OR
02:34:24 7 VERIZON OR COMCAST OR TIME WARNER, AND BY PUTTING THEIR OWN
02:34:28 8 SOFTWARE ON OUR SWITCHES, THEY CAN GET THAT CONTROL.

02:34:31 9 Q. AND WHY IS IT THAT THEY NEED TO CONTROL THOSE PATHS?

02:34:36 10 A. TO PROVIDE THE BEST QUALITY EXPERIENCE FOR THEIR END
02:34:39 11 CUSTOMER.

02:34:39 12 STANDARD ROUTING ELEMENTS DON'T NECESSARILY PICK THE VERY
02:34:43 13 FASTEST PATH TO GET THAT WEB RESPONSE FROM THE CLOUD SERVER TO
02:34:50 14 THE END CUSTOMER. THEY MAKE DECISIONS THAT ARE BASED ON THE
02:34:56 15 COMPANY BOUNDARIES, ADMINISTRATIVE BOUNDARIES, PROPERTIES OF
02:34:58 16 THE NETWORK THAT DON'T REALLY MATTER FOR PERFORMANCE.

02:35:02 17 BY REPLACING THE STANDARD ALGORITHMS WITH THE CLOUD
02:35:05 18 PROVIDER'S CUSTOMIZED ALGORITHM, THEY CAN PROVIDE BETTER
02:35:09 19 QUALITY OF SERVICE.

02:35:09 20 Q. AND CAN YOU EXPLAIN HOW IS IT THAT ARISTA'S SWITCHES ALLOW
02:35:15 21 CLOUD NETWORK OPERATORS TO GAIN THAT CONTROL?

02:35:18 22 A. WE LEFT THEM OPEN. AN OPERATOR CAN LOG INTO OUR SWITCH
02:35:24 23 AND INSTALL THEIR OWN SOFTWARE. WE PROVIDE A SOFTWARE
02:35:28 24 DEVELOPMENT KIT SO THAT THE CLOUD OPERATOR CAN CREATE THEIR OWN
02:35:31 25 SOFTWARE, TEST IT IN THEIR OWN ENVIRONMENT, AND THEN DEPLOY IT

02:35:35 1 ON TO OUR SWITCHES.

02:35:36 2 Q. AND WHAT ULTIMATE BENEFIT DOES THAT PROVIDE TO THE
02:35:39 3 CUSTOMER?

02:35:39 4 A. IT GIVES THEM THAT CONTROL OVER THE WAY THEIR NETWORK
02:35:43 5 OPERATES. OPERATING A SCALE OF THEIR APP, THAT CONTROL IS VERY
02:35:47 6 IMPORTANT.

02:35:48 7 Q. DOES ARISTA ALSO USE A FEATURE CALLED EAPI?

02:35:53 8 A. YES.

02:35:53 9 Q. AND WHAT IS EAPI?

02:35:56 10 A. EAPI IS AN AUTOMATION INTERFACE, SO THAT CUSTOMER SOFTWARE
02:36:02 11 RUNNING OFF THE SWITCH CAN MONITOR AND CONFIGURE THE SWITCH.

02:36:06 12 Q. WERE YOU PERSONALLY INVOLVED IN DESIGNING EAPI?

02:36:11 13 A. YES.

02:36:11 14 Q. AND WHY DID YOU WANT TO DO IT?

02:36:13 15 A. WE KNEW THAT OUR CLOUD COMPANY CUSTOMERS WERE OPERATING
02:36:18 16 HUGE NETWORKS AND NEEDED BETTER TOOLS TO CONTROL THOSE
02:36:22 17 SWITCHES. THE STATE OF THE ART WAS CALLED SCREEN SCRAPING, AND
02:36:26 18 IT WAS NOT REALLY ADEQUATE.

02:36:28 19 Q. DOES EAPI USE CLI COMMANDS?

02:36:32 20 A. THE CLI COMMANDS ARE IN THERE, YES, THEY ARE UNDER THE
02:36:38 21 COVERS AND ONLY ISSUED BY COMPUTERS, WHEREAS THE CLI, OF
02:36:41 22 COURSE, WAS DESIGNED TO BE ISSUED BY HUMANS.

02:36:43 23 Q. AND IN WHAT FORM DOES, ARE THE CLI COMMANDS USED IN THE
02:36:50 24 EAPI?

02:36:51 25 A. THEY ARE ENCAPSULATED IN A FORMAT CALLED JSON, WHICH IS A

02:36:57 1 FORMAT DESIGNED TO BE EASILY GENERATED AND RECOGNIZED BY
02:37:02 2 COMPUTERS.

02:37:04 3 Q. AND WHY DID YOU USE A JSON ENCAPSULATION OF CLI COMMANDS
02:37:11 4 IN EAPI?

02:37:13 5 A. WELL, WE WANTED TO CREATE A WAY FOR OUR CUSTOMERS TO
02:37:19 6 AUTOMATE EVERY ASPECT OF THE SWITCH. AND WE ALREADY HAD THE
02:37:23 7 CLI.

02:37:23 8 THINK OF THE CLI AS BEING CONTROL KNOBS. WE ALREADY HAD
02:37:28 9 ALL THE KNOBS, AND EAPI GIVES CUSTOMERS A BETTER WAY TO GET
02:37:32 10 COMPUTERS TO TURN THE KNOBS THAT ALREADY EXIST IN THE CLI.

02:37:35 11 Q. AND WHAT IS IT THAT EAPI ALLOWS ARISTA CUSTOMERS TO DO
02:37:41 12 THAT THEY COULDN'T DO WITHOUT IT?

02:37:44 13 A. IT GIVES THEM A VERY CONVENIENT WAY TO AUTOMATE COMMON
02:37:48 14 ADMINISTRATIVE TASKS SUCH AS UPGRADING SOFTWARE, CHANGING THE
02:37:52 15 BEHAVIOR OF THE NETWORK BASED ON NEW APPLICATION DEPLOYMENTS OR
02:37:56 16 SIMPLY MONITORING FOR UNUSUAL EVENTS.

02:37:59 17 Q. DID THERE COME A TIME, MR. DUDA, THAT YOU REALIZED THE
02:38:06 18 DIFFERENCE BETWEEN ARISTA'S APPROACH FOR SWITCH DESIGN WOULD
02:38:10 19 MAKE FOR CUSTOMERS?

02:38:11 20 A. YEAH, THERE WAS AN EARLY CUSTOMER CALLED BIT GRAVITY THAT
02:38:15 21 HAD A PROBLEM IN THEIR NETWORK. WE ASSESSED THAT THEY USE A
02:38:18 22 STANDARD LINUX TOOL TO DEBUG THE PROBLEM. THEY KNEW ABOUT THE
02:38:22 23 TOOL BUT THEY WERE CONFUSED BY HOW THAT TOOL COULD BE USED ON A
02:38:26 24 SWITCH.

02:38:26 25 AND WHEN I SHOWED THE CUSTOMER HOW OUR OPEN LINUX

02:38:30 1 ENVIRONMENT WORKED, THE CUSTOMER WAS SO SURPRISED, HE SWORE AND
02:38:35 2 THEN PAUSED FOR A MOMENT AND THEN SAID, DO YOU MAKE ONE GIGABIT
02:38:41 3 SWITCHES? WHICH IS ANOTHER TYPE OF SWITCH THAT UNFORTUNATELY
02:38:43 4 WE DIDN'T MAKE AT THE TIME.

02:38:44 5 Q. OKAY.

02:38:46 6 MR. SILBERT: THANK YOU, MR. DUDA.

02:38:47 7 I HAVE NOTHING FURTHER.

02:38:48 8 THE COURT: MR. PAK, CROSS-EXAMINATION?

02:38:50 9 MR. PAK: YES.

02:39:03 10 MR. VAN NEST: COULD WE MARK IT AS A DEMONSTRATIVE?

02:39:07 11 THE COURT: SURE.

02:39:08 12 MR. VAN NEST: DEMONSTRATIVE 9075.

02:39:23 13 WE WILL MARK IT, YOUR HONOR, AS DEMONSTRATIVE 9075, AND
02:39:27 14 MR. SILBERT CAN WRITE THAT ON THERE.

02:39:29 15 THE COURT: THANK YOU.

02:39:30 16 (DEFENDANT'S EXHIBIT 9075 WAS MARKED FOR IDENTIFICATION.)

02:39:32 17 **CROSS-EXAMINATION**

02:39:32 18 BY MR. PAK:

02:39:51 19 Q. GOOD TO SEE YOU AGAIN, MR. DUDA.

02:39:52 20 A. GOOD TO SEE YOU.

02:39:53 21 Q. NOW FIRST OF ALL, YOU STILL STAND BY ALL OF THE TESTIMONY
02:39:56 22 THAT YOU HAVE GIVEN IN THIS TRIAL, CORRECT?

02:39:59 23 A. YES, OF COURSE.

02:40:00 24 Q. AND YOU STILL STAND BY YOUR TESTIMONY THAT ARISTA COPIED
02:40:04 25 SOME OF CISCO'S CLI COMMANDS FROM CISCO'S SOURCES AND PUT IT

02:40:09 1 INTO ARISTA PRODUCTS, CORRECT?

02:40:10 2 A. THAT'S RIGHT.

02:40:11 3 Q. AND YOU STILL STAND BY YOUR TESTIMONY THAT ARISTA DECIDED
02:40:15 4 TO EMBRACE CISCO IOS CLI AS THE MODEL FOR ARISTA'S CLI, TRUE?

02:40:22 5 A. THAT'S RIGHT.

02:40:23 6 Q. AND ISN'T IT ALSO TRUE THAT WHEN IT CAME TO COPYING
02:40:27 7 CISCO'S CLI AND PUTTING IT INTO ARISTA SWITCHES, YOU AND OTHERS
02:40:32 8 AT ARISTA MADE THE DECISION NOT TO INNOVATE; ISN'T THAT TRUE?

02:40:35 9 A. WELL, WE DIDN'T COPY THE WHOLE CLI OR ANYTHING CLOSE. AND
02:40:40 10 WE INNOVATED IN MANY WAYS IN OUR CLI.

02:40:43 11 Q. ISN'T IT TRUE, SIR, THAT YOU HAVE SAID IN DOCUMENTS, THAT
02:40:48 12 WHEN IT CAME TO COPYING CISCO'S CLI, THERE IS NO NEED TO
02:40:51 13 INNOVATE; ISN'T THAT TRUE, SIR?

02:40:53 14 A. I PROBABLY SAID SOMETHING LIKE THAT.

02:40:55 15 Q. RIGHT. AND YOU MEANT IT WHEN YOU SAID IT; RIGHT, SIR?

02:40:57 16 A. IN THE SENSE THAT I MEANT IT.

02:41:00 17 Q. AND SIR, IT'S ALSO TRUE THAT WHEN IT CAME TO EAPI THAT YOU
02:41:05 18 TALKED ABOUT, YOU TOLD MR. DOUGLAS GOURLAY AT ARISTA THAT WE
02:41:11 19 SHOULD JUST BLATANTLY COPY CISCO'S EAPI'S; IS THAT A TRUE
02:41:17 20 STATEMENT?

02:41:17 21 A. NO, THAT'S NOT. EAPI IS IN NO WAY A COPY OF CISCO.

02:41:22 22 Q. YOU NEVER TOLD MR. GOURLAY TO COPY BLATANTLY, CISCO'S
02:41:27 23 EAPI, YOU DIDN'T MAKE THAT STATEMENT?

02:41:28 24 A. I DON'T REMEMBER SAYING SOMETHING LIKE THAT. I UNDERSTAND
02:41:31 25 THAT MR. GOURLAY SAID SOMETHING ALONG THE LINES THAT MAYBE I

02:41:34 1 HAD.

02:41:34 2 Q. LET'S TAKE A LOOK AT WHAT THE DOCUMENT SAYS.

02:41:37 3 CAN YOU TAKE A LOOK AT EXHIBIT 187 IN YOUR BINDER, SIR.

02:41:44 4 THIS IS AN E-MAIL THAT WAS SENT BY YOU TO MR. DUG GOURLAY DATED
02:41:51 5 JUNE 13, 2012.

02:41:53 6 MR. PAK: YOUR HONOR, I WOULD LIKE TO ADMIT THIS INTO
02:41:55 7 EVIDENCE.

02:41:56 8 THE COURT: ANY OBJECTION?

02:41:58 9 MR. SILBERT: NO OBJECTION.

02:41:58 10 THE COURT: IT WILL BE ADMITTED.

02:42:00 11 (DEFENDANT'S EXHIBIT 187 WAS ADMITTED INTO EVIDENCE.)

02:42:00 12 BY MR. PAK:

02:42:02 13 Q. AND IF YOU LOOK AT THE VERY TOP, KENNETH DUDA JUNE 13,
02:42:08 14 2012, YOU WROTE THIS E-MAIL TO MR. DOUGLAS GOURLAY IN 2012,
02:42:14 15 CORRECT?

02:42:14 16 A. THAT'S RIGHT.

02:42:14 17 Q. AND YOU SAID THERE IN THE SECOND PARAGRAPH, "I WANT TO
02:42:17 18 BUILD EAPI'S SO BADLY," CORRECT?

02:42:21 19 A. YES, EXACTLY.

02:42:22 20 Q. AND IF YOU SCROLL DOWN, AT THE VERY BOTTOM, WHAT
02:42:31 21 MR. GOURLAY TOLD YOU IN THIS E-MAIL CHAIN IS AT THE VERY
02:42:34 22 BOTTOM, "KEN BROUGHT UP A REALLY GOOD POINT POST ORACLE VERSUS
02:42:38 23 GOOGLE, JUST BLATANTLY COPY CISCO'S API."

02:42:44 24 THAT'S WHAT MR. GOURLAY WROTE IN A HISTORICAL DOCUMENT
02:42:48 25 ABOUT CONVERSATIONS HE WAS HAVING WITH YOU ABOUT THE AP, IGMP,

02:42:52 1 CORRECT?

02:42:52 2 YES OR NO, PLEASE. THAT'S WHAT HE WROTE, ISN'T THAT TRUE?

02:42:56 3 A. THOSE ARE HIS WORDS.

02:43:05 4 Q. WHEN YOU WORKED AT CISCO, DID YOU WORK ON AN OPERATING

02:43:06 5 SYSTEM CALLED IOS XR?

02:43:08 6 A. I DID NOT.

02:43:09 7 Q. OKAY. SO YOU HAD NO IDEA WHAT TYPE OF INNOVATIVE FEATURES

02:43:12 8 WENT INTO CISCO'S IOS XR; ISN'T THAT TRUE?

02:43:14 9 A. I KNOW A LIMITED AMOUNT ABOUT IOS XR.

02:43:17 10 Q. YOU HAVE NO PERSONAL KNOWLEDGE OF DESIGNING ANYTHING THAT

02:43:19 11 WENT INTO IOS XR, CORRECT?

02:43:21 12 A. I DID NOT DESIGN ANYTHING RELATED TO IOS XR.

02:43:24 13 Q. DID YOU KNOW, SIR, BEFORE YOUR TESTIMONY HERE TODAY THAT

02:43:27 14 SYSDB WAS IN IOS XR AS EARLY AS 2000?

02:43:31 15 A. I KNOW THAT CISCO HAS A TECHNOLOGY THAT CISCO CALLS SYSDB.

02:43:37 16 Q. AND YOU KNOW THAT THAT WAS ADDED TO THE IOS XR OPERATING

02:43:41 17 SYSTEM IN THE EARLY 2000'S BY CISCO; YOU KNOW THAT, RIGHT?

02:43:44 18 A. I DON'T KNOW WHEN CISCO ADDED SYSDB TO IOS XR.

02:43:49 19 Q. YOU ARE NOT DISPUTING THAT, ARE YOU?

02:43:51 20 A. NO.

02:43:51 21 Q. AND YOU ALSO UNDERSTAND THAT IOS XR FROM CISCO HAS

02:43:54 22 RELIABILITY, MODULAR DESIGN AND SELF HEALING FEATURES; YOU

02:44:00 23 UNDERSTAND THAT, CORRECT?

02:44:00 24 A. I DON'T KNOW ABOUT IOS XR FEATURES.

02:44:02 25 Q. YOU HAVE NO REASON TO DISPUTE ABOUT OF THOSE CLAIMS BY

02:44:05 1 CISCO, CORRECT?

02:44:05 2 A. NO.

02:44:09 3 Q. BUT YOU DO KNOW, SIR, THAT BEFORE YOU STARTED WORK ON
02:44:13 4 SYSDB, THAT CISCO HAD A PATENT ON SYSDB BEFORE ARISTA'S WORK ON
02:44:18 5 THAT TECHNOLOGY, TRUE?

02:44:20 6 A. NO, WE HAD NO KNOWLEDGE OF CISCO'S PATENTS.

02:44:22 7 Q. YOU KNOW -- YOU TESTIFIED EARLIER IN THIS CASE THAT YOU
02:44:26 8 KNOW THAT CISCO HAS PATENTS ON SYSDB TECHNOLOGY, CORRECT? YOU
02:44:29 9 STILL STAND BY THAT TESTIMONY?

02:44:30 10 A. I KNOW TODAY THAT CISCO HAS A PATENT ON SOMETHING CALLED
02:44:34 11 SYSDB, BUT I DID NOT KNOW THAT WHEN WE WERE WORKING ON OUR
02:44:38 12 SYSDB.

02:44:39 13 MR. PAK: THANK YOU, YOUR HONOR.

02:44:40 14 THAT'S ALL I HAVE.

02:44:41 15 THE COURT: ANYTHING ELSE, MR. SILBERT?

02:44:41 16 **REDIRECT EXAMINATION**

02:44:44 17 MR. SILBERT:

02:44:44 18 Q. VERY BRIEFLY, YOUR HONOR. THANK YOU.

02:44:48 19 MR. DUDA, COULD YOU EXPLAIN WHY YOU SAID WORDS TO THE
02:44:52 20 EFFECT THAT THERE'S NO NEED TO INNOVATE WITH RESPECT TO CLI
02:44:58 21 COMMANDS.

02:44:58 22 A. SURE. WHAT WE WERE FOCUSED ON THERE IS THE COMMANDS
02:45:01 23 THEMSELVES. THESE ARE COMMANDS THAT ARE COMMON THROUGHOUT THE
02:45:04 24 INDUSTRY, THAT OUR CUSTOMERS PARTICULARLY ON THE ENTERPRISE
02:45:07 25 SIDE, ALREADY KNOW AND ARE FAMILIAR WITH. AND THERE'S NO

02:45:12 1 REASON TO CHANGE THEM JUST FOR THE SAKE OF CHANGING THEM.

02:45:14 2 PEOPLE ARE USED TO THEM.

02:45:16 3 LOTS OF DIFFERENT DEVICES ACCEPT THEM, AND WE SHOULD
02:45:20 4 SIMPLY ACCEPT THE SAME COMMANDS.

02:45:22 5 Q. REFERRING TO THE TECHNOLOGY OF THE CLI ITSELF, SEPARATE
02:45:26 6 FROM THE COMMANDS, HAS ARISTA INNOVATED IN THAT AREA?

02:45:30 7 A. WE HAVE SEVERAL INNOVATIONS IN THE CLI. IT'S WRITTEN IN
02:45:33 8 THE LANGUAGE CALLED PYTHON THAT MAKES IT EASIER TO ADD NEW
02:45:41 9 COMMANDS. IT PROVIDES ACCESS TO DIRECT TO UNIX PIPES, GIVES
02:45:44 10 OUR CUSTOMERS MORE WAYS TO PROCESS THE OUTPUT OF COMMANDS.
02:45:45 11 THERE ARE SEVERAL OTHER INNOVATIONS AS WELL.

02:45:50 12 Q. OKAY. MR. PAK SHOWED YOU EXHIBIT 187, THE E-MAIL FROM
02:45:56 13 MR. GOURLAY SAYING THAT YOU SAID SOMETHING ABOUT, WHY NOT JUST
02:45:59 14 BLATANTLY COPY CISCO'S API'S. DO YOU RECALL HIM DISCUSSING
02:46:04 15 THAT EXHIBIT WITH YOU?

02:46:04 16 A. YES.

02:46:05 17 Q. IS EAPI, IN ANY WAY, A COPY OF CISCO'S API'S?

02:46:12 18 A. ABSOLUTELY NOT. EAPI IS OUR OWN INVENTION.

02:46:16 19 Q. IN WHAT WAY? CAN YOU JUST EXPLAIN IN WHAT WAY IS IT
02:46:19 20 DIFFERENT?

02:46:20 21 A. WELL, IT WAS A NEW INVENTION AT THE TIME, IT WAS DIFFERENT
02:46:23 22 FROM ANY EXISTING API THAT I'M AWARE OF IN THE WAY THAT IT
02:46:28 23 ENCAPSULATES THE EXISTING CLI COMMANDS IN JSON PACKAGING THAT
02:46:36 24 MAKES THOSE COMMANDS EASY TO THE COMPUTERS TO ISSUE AND MAKES
02:46:40 25 THE COMMAND RESPONSES EASIER FOR THE COMPUTERS TO INTERPRET.

02:46:42 1
02:46:45 2
02:46:48 3
02:46:51 4
02:46:55 5
02:46:56 6
02:47:00 7
02:47:00 8
02:47:05 9
02:47:07 10
02:47:15 11
02:47:17 12
02:47:17 13
02:47:23 14
02:47:30 15
02:47:30 16
02:47:31 17
02:47:33 18
02:47:36 19
02:47:40 20
02:47:46 21
02:47:49 22
02:47:55 23
02:47:56 24
02:47:59 25

OTHER VENDOR'S API'S INTENDED TO BE COMPLETELY NEW
DEFINITIONS THAT REQUIRED ENGINEERS TO LEARN NEW THINGS.
Q. DO YOU HAVE ANY MEMORY OF SAYING THE WORDS TO THE EFFECT
OF, "WE COULD BLATANTLY COPY CISCO'S API'S?"
A. NO, I DON'T.
Q. DO YOU HAVE ANY UNDERSTANDING OF THE CONTEXT IN WHICH YOU
MIGHT HAVE SAID THAT?
A. I REALLY DON'T KNOW, IT'S POSSIBLE I WAS KIDDING AROUND IN
THE CONTEXT OF THE ORACLE V. GOOGLE DECISION, I DON'T KNOW.
Q. OKAY. MR. PAK ASKED YOU SOME QUESTIONS ABOUT IOS XR AND
SYSDB; DO YOU RECALL THAT?
A. YES.
Q. TO YOUR KNOWLEDGE, DOES ANY OTHER ETHERNET SWITCH COMPANY
IMPLEMENT A STATE SHARING ARCHITECTURE THE WAY THAT ARISTA
DOES?
A. NO.
Q. AND WHY DO YOU SAY THAT?
A. WELL, THERE'S CERTAIN DOCUMENTS THAT DESCRIBE HOW THE IOS
XR SYSDB WORKS THAT I'VE LOOKED AT, OBVIOUSLY, AFTER WE BUILT
OUR SYSDB. AND IN THOSE DOCUMENTS, THE WAY THEY DESCRIBE THE
OPERATION OF SYSDB IS ENTIRELY DIFFERENT FROM THE WAY ARISTA'S
SYSDB WORKED, WHICH WE CREATED WITH NO KNOWLEDGE OF THE IOS XR
SYSDB.
Q. AND WITHOUT GOING INTO TOO MUCH DETAIL, CAN YOU EXPLAIN
WHAT ARE SOME OF THE DIFFERENCES THAT YOU'RE REFERRING TO?

02:48:01 1 A. ONE PRINCIPAL DIFFERENCE IS THAT IN XR SYSDB, AS I
02:48:08 2 UNDERSTAND IT, IS THERE ARE TRANSACTIONS WHERE A PROCESS THAT
02:48:09 3 WANTS TO READ OR WRITE STATE SENDS A MESSAGE TO THE DATABASE
02:48:13 4 ASKING TO READ OR WRITE THAT STATE, AND THEN WAITS FOR A
02:48:15 5 RESPONSE EITHER CONTAINING THE STATE THAT'S BEEN READ OR
02:48:19 6 CONTAINING AN ACKNOWLEDGEMENT THAT THE RIGHT HAS SUCCEEDED.
02:48:22 7 OUR DATABASE WORKS COMPLETELY DIFFERENTLY. IN OUR
02:48:24 8 DATABASE, A PROCESS STARTS BY INDICATING INTEREST IN A BLOCK OF
02:48:31 9 STATE, AND THEN STREAMS ANY UPDATES TO THAT STATE
02:48:34 10 ASYNCHRONOUSLY. AND SYSDB, MEANWHILE, STREAMS ANY UPDATES THE
02:48:38 11 OTHER DIRECTION AS WELL. THERE'S NO READ WRITE RESPONSES AND
02:48:42 12 REQUESTS.

02:48:42 13 Q. AND WHAT'S THE CONSEQUENCE OF THAT DIFFERENCE IN DESIGN?

02:48:45 14 A. I BELIEVE THAT OUR DESIGN PERFORMS BETTER BECAUSE THE
02:48:51 15 AGENT PROCESSES DON'T NEED TO WAIT FOR THE DATABASE TO PERFORM
02:48:53 16 THEIR BASIC FUNCTIONS.

02:48:55 17 MR. VAN NEST: THANK YOU.

02:48:57 18 NOTHING FURTHER.

02:48:57 19 THE COURT: MR. PAK, ANYTHING'S ELSE?

02:48:59 20 MR. PAK: JUST A QUICK QUESTION, YOUR HONOR.

02:49:03 21 **RECROSS-EXAMINATION**

02:49:03 22 BY MR. PAK:

02:49:03 23 Q. YOU ARE NOT DISPUTING THAT CISCO HAD SYSDB IN THEIR
02:49:07 24 OPERATING SYSTEM BEFORE YOU STARTED WORK ON SYSDB AT ARISTA,
02:49:10 25 CORRECT? YOU ARE NOT DENYING THAT, ARE YOU?

02:49:13 1 A. THESE ARE DIFFERENT SYSDB'S. THERE'S -- CISCO HAD A
02:49:17 2 TECHNOLOGY CALLED SYSDB IN ITS PRODUCTS AT SOME TIME BEFORE WE
02:49:21 3 DELIVERED OUR FIRST PRODUCT.

02:49:22 4 Q. THAT'S RIGHT.

02:49:24 5 AND SIR, YOU HAD NO PERSONAL KNOWLEDGE OF HOW IOS XR
02:49:27 6 WORKED UNTIL YOUR TESTIMONY YOU JUST GAVE TODAY, CORRECT?

02:49:29 7 A. THAT'S RIGHT.

02:49:30 8 MR. PAK: OKAY. THANK YOU.

02:49:32 9 THE COURT: IS THAT EVERYTHING FOR THIS WITNESS?

02:49:34 10 MR. PAK: YOUR HONOR, I THINK I WOULD LIKE TO
02:49:36 11 ACTUALLY MOVE TO STRIKE HIS RESPONSES ON IOS XR BASED ON HIS
02:49:40 12 LACK OF PERSONAL KNOWLEDGE. I THINK HE JUST TESTIFIED THAT HE
02:49:42 13 HAD NO PERSONAL KNOWLEDGE.

02:49:44 14 THE COURT: WELL, LET ME FIGURE OUT WHERE THAT IS, IS
02:49:47 15 THAT THE ANSWER HE JUST GAVE?

02:49:48 16 MR. PAK: HE GAVE A FAIRLY LENGTHY ANSWER RIGHT AT
02:49:51 17 THE END OF MR. SILBERT'S EXAMINATION.

02:49:53 18 THE COURT: SO YOU WANT ME TO GO BACK?

02:49:54 19 MR. PAK: YES, YOUR HONOR.

02:49:56 20 BUT HE GAVE AN ANSWER THAT WAS WITH RESPECT TO IOS XR, I
02:49:59 21 JUST ASKED HIM WHETHER HE HAD ANY PERSONAL KNOWLEDGE. HE SAID
02:50:03 22 HE DID NOT. SO I MOVE TO STRIKE MR. --

02:50:08 23 THE WITNESS: I PROBABLY MISSPOKE BECAUSE --

02:50:10 24 MR. PAK: WE HAVE MR. DUDA'S RESPONSE ON THAT, BUT WE
02:50:13 25 CAN TAKE THAT UP AT A LATER TIME IF YOUR HONOR WOULD LIKE.

02:50:15 1 THE COURT: I'M CONFUSED ABOUT WHAT YOU WANT TO
02:50:17 2 STRIKE, I'M SORRY.
02:50:18 3 MR. PAK: YOUR HONOR, LET ME SAVE MY OBJECTION UNTIL
02:50:21 4 ANOTHER TIME.
02:50:21 5 THANK YOU.
02:50:21 6 THE COURT: I APPRECIATE THAT.
02:50:23 7 MR. SILBERT, ANYTHING FURTHER FOR THIS WITNESS?
02:50:26 8 MR. SILBERT: NO, YOUR HONOR.
02:50:29 9 MR. VAN NEST: MAY I STICK THIS STICKER ON HERE,
02:50:32 10 YOUR HONOR?
02:50:33 11 THE COURT: SURE, I APPRECIATE THAT. THAT'S HELPFUL.
02:50:35 12 MR. VAN NEST: WE WILL STAPLE IT BETTER, BUT HERE WE
02:50:38 13 GO.
02:50:38 14 THE COURT: IT WILL DO FOR NOW.
02:50:40 15 I THINK WE ARE GOING TO TAKE A BREAK BEFORE THE NEXT
02:50:42 16 WITNESS, IF THAT'S ALL RIGHT.
02:50:43 17 MR. DUDA, YOU MAY STEP DOWN.
02:50:45 18 ALL RIGHT. LET'S TAKE A TEN-MINUTE BREAK AND WE WILL COME
02:50:48 19 BACK AT 3:00.
02:50:50 20 (RECESS FROM 2:50 P.M. UNTIL 3:01 P.M.)
03:03:12 21 THE COURT: OUR JURY IS BACK. MR. FERRALL, DO YOU
03:03:15 22 HAVE THE NEXT WITNESS?
03:03:17 23 MR. FERRALL: I DO, YOUR HONOR. THANK YOU.
03:03:19 24 ARISTA NETWORKS CALLS HUGH HOLBROOK AS ITS NEXT WITNESS.
03:03:23 25 THE COURT: OKAY.

03:03:30 1 AND MR. HOLBROOK, IF YOU WOULD COME FORWARD TO THE WITNESS
03:03:36 2 STAND, PLEASE, AND STAND TO BE SWORN.

03:03:45 3 **(DEFENDANT'S WITNESS, HUGH HOLBROOK, WAS SWORN.)**

03:03:52 4 THE WITNESS: YES.

03:03:58 5 THE CLERK: AND IF YOU WOULD PLEASE STATE YOUR NAME
03:04:01 6 AND SPELL YOUR LAST NAME FOR THE RECORD.

03:04:03 7 THE WITNESS: HUGH HOLBROOK. H-O-L-B-R-O-O-K.

03:04:08 8 **DIRECT EXAMINATION**

03:04:08 9 BY MR. FERRALL:

03:04:12 10 Q. GOOD AFTERNOON, MR. HOLBROOK.

03:04:13 11 A. GOOD AFTERNOON.

03:04:14 12 Q. DO YOU HAVE A BINDER THERE OF SOME EXHIBITS WE WILL TALK
03:04:17 13 ABOUT?

03:04:17 14 A. I DON'T.

03:04:19 15 Q. OH, PARDON ME. THAT'S NOT FAIR.

03:04:31 16 MR. HOLBROOK, PLEASE INTRODUCE YOURSELF TO THE JURY.

03:04:35 17 A. HI, MY NAME IS HUGH HOLBROOK.

03:04:38 18 Q. TELL US A LITTLE BIT ABOUT YOURSELF, YOUR FAMILY.

03:04:41 19 A. I GREW UP IN MINNESOTA. MY FAMILY STILL LIVES THERE. MY
03:04:48 20 PARENTS DO. MY SISTER LIVES IN MINNESOTA. MY BROTHER LIVES IN
03:04:52 21 MOUNTAIN VIEW.

03:04:52 22 I'VE GOT THREE KIDS, A SEVENTH GRADER AND AN EIGHTH GRADER
03:04:56 23 AND A FIRST GRADER. AND I SPEND MOST OF MY FREE TIME WITH MY
03:05:02 24 KIDS. I REFEREE SOCCER GAMES.

03:05:06 25 Q. YOU ARE CURRENTLY AT ARISTA?

03:05:08 1
03:05:09 2
03:05:10 3
03:05:13 4
03:05:16 5
03:05:20 6
03:05:27 7
03:05:31 8
03:05:31 9
03:05:33 10
03:05:37 11
03:05:39 12
03:05:44 13
03:05:45 14
03:05:49 15
03:05:54 16
03:05:59 17
03:06:01 18
03:06:05 19
03:06:07 20
03:06:11 21
03:06:13 22
03:06:19 23
03:06:22 24
03:06:26 25

A. YES, I AM.

Q. WHAT'S YOUR POSITION AT ARISTA?

A. I'M THE VICE PRESIDENT OF SOFTWARE ENGINEERING.

Q. WHAT ARE YOU RESPONSIBLE FOR AT ARISTA?

A. I'M RESPONSIBLE FOR ABOUT HALF OF THE SOFTWARE TEAM. SO IT'S THE PART OF THE TEAM THAT WRITES SOFTWARE THAT IS KIND OF CLOSER TO HARDWARE. MOSTLY, NOT ENTIRELY, BUT THAT'S MOSTLY IT.

Q. HOW LONG HAVE YOU BEEN WITH ARISTA?

A. I HAVE BEEN AT ARISTA SINCE THE BEGINNING OF JANUARY OF 2005, SO ALMOST 12 YEARS.

Q. AND CAN YOU PROVIDE AN OVERVIEW OF YOUR EDUCATIONAL EXPERIENCE.

A. WELL, LIKE I SAID, I WENT TO HIGH SCHOOL IN MINNESOTA AND THEN I CAME TO CALIFORNIA FOR COLLEGE. AND I GOT A BACHELOR'S, MASTER'S AND PH.D. FROM STANFORD UNIVERSITY. COMPLETING MY PH.D. IN 2001.

Q. AND WHAT WAS YOUR -- WHAT WERE YOUR DEGREES IN?

A. ALL THREE OF MY DEGREES WERE IN COMPUTER SCIENCE.

Q. CAN YOU BRIEFLY TELL US WHAT YOU DID PROFESSIONALLY BEFORE YOU CAME TO ARISTA?

A. WELL, I HAD A HANDFUL OF SUMMER JOBS. I WORKED AT TANDEM COMPUTER, I WORKED AT A VIDEO GAME COMPANY DOING VIDEO GAMES FOR THE SEGA GENESIS, AND THEN I WORKED AT CISCO BEFORE COMING TO ARISTA.

03:06:26 1 Q. HOW LONG DID YOU WORK AT CISCO BEFORE ARISTA?

03:06:28 2 A. I THINK IT WAS ABOUT EIGHT YEARS.

03:06:30 3 Q. HAVE YOU EVER WORKED WITH ANY STANDARDS ORGANIZATIONS?

03:06:35 4 A. YES, I HAVE.

03:06:36 5 Q. WHICH ONES?

03:06:37 6 A. SO I WORKED WITH THE INTERNET ENGINEERING TASK FORCE, THE
03:06:43 7 IETF, IT'S THE ORGANIZATION THAT KIND OF DEFINES THE STANDARDS
03:06:47 8 FOR THE INTERNET, FOR THE MOST PART.

03:06:49 9 Q. CAN YOU EXPLAIN HOW YOU GOT INVOLVED WITH THE IETF,
03:06:52 10 PLEASE?

03:06:52 11 A. WELL, IT WAS KIND OF A CONTINUATION OF THE WORK I DID ON
03:06:57 12 MY PH.D. DISSERTATION. SO MY WORK IN MY PH.D. WAS ON SOMETHING
03:07:03 13 CALLED MULTICAST, AND I ENDED UP STANDARDIZING THAT INSIDE THE
03:07:08 14 IETF.

03:07:08 15 Q. CAN YOU TELL US IN HIGH LEVEL TERMS, IF YOU WILL, WHAT
03:07:13 16 THE -- WHAT YOUR FOCUS WAS ON MULTICAST WITH IETF?

03:07:18 17 A. WELL, SO MULTICAST IS A TECHNOLOGY THAT'S BEEN AROUND
03:07:21 18 SINCE MAYBE THE EARLY 90'S OR LATE 80'S. IT'S SORT OF LIKE
03:07:28 19 RADIO ON THE INTERNET, SO IT'S USED FOR TV DISTRIBUTION, FOR
03:07:32 20 INSTANCE.

03:07:32 21 AND THERE'S ONE TRANSMITTER, AND LOTS OF RECEIVERS CAN
03:07:35 22 TUNE IN TO THE SAME INTERNET STATION, AS IT WERE. AND THE
03:07:41 23 MULTICAST DELIVERS THAT DATA MORE EFFICIENTLY.

03:07:45 24 MY WORK IN THE IETF WAS STANDARDIZING SOMETHING CALLED
03:07:50 25 SOURCE-SPECIFIC MULTICAST, WHICH SOLVED A LOT OF TECHNICAL

03:07:54 1
03:07:56 2
03:08:02 3
03:08:09 4
03:08:10 5
03:08:11 6
03:08:17 7
03:08:19 8
03:08:22 9
03:08:22 10
03:08:23 11
03:08:25 12
03:08:25 13
03:08:25 14
03:08:31 15
03:08:36 16
03:08:39 17
03:08:44 18
03:08:47 19
03:08:50 20
03:08:57 21
03:09:00 22
03:09:00 23
03:09:02 24
03:09:03 25

PROBLEMS THAT MADE MULTICAST DIFFICULT TO USE.

Q. IF YOU COULD OPEN UP YOUR BINDER AND LOOK AT EXHIBIT 6923,
PLEASE. DO YOU RECOGNIZE THAT?

A. I DO.

Q. WHAT IS THAT?

A. THAT IS A STANDARDS DOCUMENT FROM THE IETF, IT'S ONE THAT
I WAS AN AUTHOR ON.

MR. FERRALL: YOUR HONOR, I WOULD MOVE EXHIBIT 6923
INTO EVIDENCE.

MR. NELSON: NO OBJECTION YOUR HONOR.

THE COURT: IT WILL BE ADMITTED.

(DEFENDANT'S EXHIBIT 6923 WAS ADMITTED INTO EVIDENCE.)

BY MR. FERRALL:

Q. IF WE COULD JUST LOOK AT THE HEADING IN THE TOP. CAN YOU
EXPLAIN A LITTLE BIT MORE ABOUT HOW THIS DOCUMENT CAME ABOUT?

A. WELL, AS I SAID, THIS WAS PART OF THAT STANDARDIZATION
EFFORT OF SOURCE-SPECIFIC MULTICAST IN THE IETF.

THIS WAS ONE OF THE STANDARDS DOCUMENTS FOR SOURCE
SPECIFIC MULTICAST. IT WAS WORK, AS I SAID, KIND OF STARTED AS
PART OF MY DISSERTATION AND THEN I PARTICIPATED IN THE IETF.

Q. NOW IT SAYS UNDER YOUR NAME THERE ARASTRA?

A. THAT'S CORRECT.

Q. AND THAT'S THE PREDECESSOR NAME FOR ARISTA?

A. THAT'S RIGHT.

Q. DID YOU DO ALL YOUR WORK ON THIS WHILE AT ARISTA?

03:09:05 1 A. NO, I DID NOT.

03:09:07 2 Q. CAN YOU EXPLAIN THEN WHY THIS DOCUMENT HAS THE ARASTRA
03:09:14 3 NAME ON IT, IF YOU WORKED ON IT WHILE IN OTHER PARTS OF YOUR
03:09:18 4 CAREER?

03:09:19 5 A. WELL, I MEAN, THIS IS, I THINK WE PROBABLY STARTED THE
03:09:23 6 WORK ON THIS IN 2000. AND I THINK THE PRACTICE OF THE IETF IS
03:09:28 7 TO PUT YOUR CURRENT ADDRESS ON THE DOCUMENT THAT YOU PUBLISH,
03:09:32 8 AS SORT OF THE DOCUMENTS OF THE IETF ARE NOT OWNED BY ANYONE,
03:09:37 9 THEY'RE -- THE IETF'S POLICY, AS I UNDERSTAND IT, IS THE WORK
03:09:42 10 IS INDIVIDUAL CONTRIBUTIONS BY INDIVIDUALS.

03:09:44 11 AND THE COMPANY NAME THAT'S ON THERE IS A KIND OF TIP OF
03:09:48 12 THE HAT TO THE COMPANY WHO PAID FOR YOUR HOTEL AND PAID FOR
03:09:53 13 YOUR PLANE FLIGHT, BUT YOU'RE REPRESENTING YOURSELF AT THE
03:09:56 14 IETF.

03:09:57 15 Q. AND WERE THERE EARLIER DRAFTS OF THIS DOCUMENT CIRCULATED
03:10:00 16 AMONG IETF PARTICIPANTS.

03:10:03 17 A. YES, ABSOLUTELY.

03:10:03 18 Q. FOR APPROXIMATELY HOW MANY YEARS?

03:10:05 19 A. I DON'T KNOW WHEN THE FIRST DRAFT WAS, BUT I THINK THE
03:10:08 20 WORKING GROUP STARTED IN PROBABLY 2000.

03:10:10 21 Q. OKAY. AND THE DATE OF THIS IS 2006?

03:10:13 22 A. THAT'S CORRECT.

03:10:13 23 Q. ARE YOU THE NAMED INVENTOR ON ANY PATENTS?

03:10:18 24 A. I AM.

03:10:18 25 Q. HOW MANY?

03:10:19 1 A. I THINK I HAD EIGHT FROM MY TIME AT CISCO, AND FIVE SINCE
03:10:23 2 I HAVE BEEN AT ARISTA.

03:10:30 3 Q. I WOULD LIKE TO TURN TO YOUR JOINING ARISTA.

03:10:32 4 CAN YOU EXPLAIN GENERALLY THE CIRCUMSTANCES OF YOUR
03:10:34 5 LEAVING CISCO AND JOINING ARISTA?

03:10:35 6 A. SURE. SO IN THE FALL OF 2004, I WAS ON PATERNITY LEAVE
03:10:41 7 BECAUSE OF MY NOW SEVENTH GRADER HAD JUST BEEN BORN, SO I WAS
03:10:44 8 HOME WITH HER. AND KEN CALLED ME UP, INVITED ME TO LUNCH.

03:10:49 9 Q. EXCUSE ME, THAT'S KEN DUDA?

03:10:50 10 A. YEAH, KEN DUDA. CALLED ME UP AND INVITED ME TO LUNCH AND
03:10:56 11 SAID HE WAS STARTING A NEW COMPANY ALONG WITH ANDY BECHTOLSHEIM
03:11:00 12 AND DAVID SHERATON, AND THAT THEY WERE GOING TO FOCUS ON
03:11:02 13 SOFTWARE AND DO THINGS DIFFERENTLY, AND WAS I INTERESTED, AND
03:11:07 14 THE WORDS WERE, DECLARING VICTORY OVER ETHERNET SWITCHING AND
03:11:11 15 MOVING ON TO DO SOMETHING DIFFERENT.

03:11:12 16 Q. AND WHAT WAS YOUR REACTION?

03:11:13 17 A. WELL, I THOUGHT ABOUT IT FOR A LITTLE BIT AND I SAID YEAH,
03:11:16 18 DEFINITELY.

03:11:16 19 Q. WHY?

03:11:16 20 A. I MEAN, THIS IS JUST A FANTASTIC OPPORTUNITY TO WORK WITH
03:11:20 21 THREE PEOPLE WHO I HAVE THE UTMOST RESPECT FOR. THEY ARE
03:11:24 22 BRILLIANT ENGINEERS AND SCIENTISTS AND GREAT PEOPLE TO WORK
03:11:27 23 WITH. AND IT WAS JUST AN OPPORTUNITY I COULDN'T TURN DOWN.

03:11:32 24 Q. DID ARISTA HAVE A PRODUCT DESIGNED YET?

03:11:36 25 A. NO, THEY DIDN'T HAVE A PRODUCT AT ALL. THEY HAD SOME

03:11:39 1 IDEAS ABOUT WHAT THEY WERE GOING TO BUILD, BUT NO PRODUCT.

03:11:42 2 Q. AND YET YOU STILL WERE GOING TO JOIN ARISTA?

03:11:44 3 A. YEAH. AGAIN, THE STRENGTH OF THE TEAM AND THE VISION FOR
03:11:47 4 HOW WE WERE GOING TO BUILD SOFTWARE AND FOCUS ON SOFTWARE
03:11:51 5 INSTEAD OF HARDWARE, IT WAS JUST AN OPPORTUNITY THAT I COULD
03:11:54 6 NOT SAY NO TO.

03:11:55 7 Q. OKAY. AND AT SOME POINT, ARISTA DECIDED TO DEVELOP AN
03:11:59 8 ETHERNET SWITCH, CORRECT?

03:12:01 9 A. THAT'S CORRECT.

03:12:01 10 Q. AND WHEN WAS THAT DECISION MADE?

03:12:04 11 A. I THINK THAT WAS PROBABLY ABOUT A YEAR, I THINK ROUGHLY A
03:12:07 12 YEAR AFTER I STARTED.

03:12:08 13 WE KIND OF HAD SOME EARLY PRODUCT IDEAS, AND THEY ACTUALLY
03:12:11 14 TURNED OUT NOT TO BE VIABLE BASED ON CUSTOMERS THAT WE TALKED
03:12:14 15 TO, IT WASN'T A GOOD STRATEGY, AND SO WE MOVED INTO ETHERNET
03:12:19 16 SWITCHING.

03:12:19 17 Q. SO ONCE ARISTA HAD SETTLED ON MAKING ETHERNET SWITCHES,
03:12:26 18 CAN YOU TELL ME, GENERALLY, WHAT WAS ARISTA'S PRODUCT GOALS FOR
03:12:29 19 THAT ETHERNET SWITCH?

03:12:31 20 A. WELL, WE WERE LOOKING AT TARGETING THE RISING CLOUD
03:12:39 21 NETWORKS, THE CLOUD PROVIDERS, WHICH WAS KIND OF A BIG AND
03:12:42 22 RISING SEGMENT THE OF THE MARKET IN 2004, 2005, AND WE WERE
03:12:46 23 TARGETING THAT MARKET OF NETWORK EQUIPMENT.

03:12:49 24 Q. CAN YOU PROVIDE US SOME OF THE FEATURES OR CHARACTERISTICS
03:12:54 25 OF THE SWITCH THAT YOU THOUGHT WOULD BE ATTRACTIVE TO A CLOUD

03:12:59 1 NETWORKING COMPANY?

03:13:00 2 A. WELL, I THINK THAT WE WERE REALLY FOCUSED ON 10 GIGABIT
03:13:05 3 ETHERNET AT THE TIME. SO I THINK THE 10 GIGABIT ETHERNET,
03:13:07 4 WHICH WAS TEN TIMES FASTER THAN WHAT HAD BEEN THE KIND OF
03:13:11 5 WIDESPREAD TECHNOLOGY AT THE TIME, WHICH WAS 1 GIGABIT
03:13:14 6 ETHERNET, WITH HIGH DENSITY, MEANING A LOT OF PORTS IN A SINGLE
03:13:18 7 BOX.

03:13:18 8 AND WE FELT LIKE WE COULD BUILD THAT PRODUCT, AND ANDY HAD
03:13:22 9 AN ARCHITECTURE IN MIND FOR BUILDING THAT PRODUCT, AND WHICH
03:13:28 10 WAS PRETTY IMPRESSIVE, HONESTLY TO ME, AT THE TIME.

03:13:31 11 Q. WERE THERE ALREADY HIGH DENSITY 10 GIGABIT ETHERNET
03:13:35 12 SWITCHES OUT ON THE MARKET AT THIS TIME?

03:13:38 13 A. NO, THERE REALLY WEREN'T, PROBABLE TO WHAT WE PRODUCED.

03:13:43 14 Q. AND WERE YOU -- I THINK WE, THE JURY HAS ALREADY SEEN
03:13:54 15 THIS. DO YOU RECOGNIZE THIS EXHIBIT 5594, DO YOU RECOGNIZE
03:14:05 16 THIS?

03:14:06 17 A. YES, I DO RECOGNIZE THAT.

03:14:07 18 Q. AND DID YOU SEE THIS AT ARISTA?

03:14:11 19 A. YEAH, I DID. THIS HAS BEEN FLOATING AROUND AT ARISTA
03:14:14 20 SINCE MAYBE 2000, SINCE 2005, PROBABLY, OR WHENEVER IT WAS THAT
03:14:18 21 WE BUILT THAT.

03:14:20 22 THAT IS A STYROFOAM MARKUP THAT JOHN GRAVES BUILT ON THE
03:14:24 23 WEEKEND WITH HIS KIDS AT HOME FOR FUN OF THE 7500 CHASSIS, THIS
03:14:29 24 WAS ANDY'S ORIGINAL PRODUCT VISION. AND THE PRODUCT THAT WE
03:14:34 25 SELL NOW LOOKS PRETTY MUCH LIKE THAT.

03:14:35 1 Q. OKAY. AND I THINK THE JURY HEARD THAT THE 7500 WAS
03:14:38 2 RELEASED IN 2010; IS THAT RIGHT?

03:14:42 3 A. YEAH. I THINK WE HAD SOME EARLY CUSTOMER SHIPMENTS IN
03:14:45 4 2009, BUT IT DIDN'T HIT WIDESPREAD MARKET, I DON'T THINK WE PUT
03:14:49 5 IT FOR SALE, REALLY, UNTIL 2010.

03:14:51 6 Q. OKAY. SO I WOULD LIKE TO TURN FOR A SECOND, MR. HOLBROOK,
03:14:56 7 ABOUT OTHER PRODUCTS.

03:15:00 8 DID ARISTA INTRODUCE ANY OTHER PRODUCTS BEFORE IT
03:15:03 9 INTRODUCED THE 7500?

03:15:04 10 A. WE DID.

03:15:05 11 Q. AND CAN YOU TELL ME, AGAIN, GENERALLY, WHAT WAS THAT
03:15:09 12 PRODUCT?

03:15:10 13 A. WELL, THE KIND OF FUNDAMENTAL SWITCHING TECHNOLOGY, THE
03:15:16 14 CHIP THAT WAS GOING TO GO INTO THAT PRODUCT WAS DELAYED, SO WE
03:15:20 15 BUILT ONE RU, ONE RACK UNIT, WHICH IS ABOUT AN INCH AND A HALF
03:15:25 16 HIGH PIZZA BOX, THEY ARE CALLED THE PIZZA BOX BECAUSE THEY KIND
03:15:28 17 OF HAVE THE SHAPE OF A PIZZA BOX SWITCH, CALLED SONOMA WAS THE
03:15:31 18 CODE NAME OF THE PRODUCT.

03:15:32 19 Q. AND WHAT WAS THE PUBLIC PRODUCT NAME FOR THAT SWITCH?

03:15:35 20 A. THAT WAS THE 7148, MAYBE 7148 SX, I THINK.

03:15:40 21 Q. WAS THERE ANYTHING INNOVATIVE OR DISTINCTIVE ABOUT THE
03:15:46 22 7148 PRODUCT AS COMPARED TO WHAT WAS ALREADY ON THE MARKET?

03:15:49 23 A. YEAH, THERE WAS, IT WAS ACTUALLY PRETTY GROUND BREAKING AT
03:15:53 24 THE TIME, IF YOU ASK ME.

03:15:54 25 Q. CAN YOU TELL ME A COUPLE OF THINGS THAT WERE NEW ABOUT THE

03:15:57 1 7148?

03:15:58 2 A. THE 7148 WAS THE ONLY PRODUCTS THAT HAD 48 10 GIGABIT
03:16:04 3 ETHERNET PORTS.

03:16:04 4 SO BASICALLY IT WAS FASTER, HAD MORE PORTS IN IT THAN
03:16:09 5 ANYBODY ELSE. I THINK THE NEXT PRODUCT THAT HAD 48 10 GIGABIT
03:16:15 6 ETHERNET PORTS THAT I WAS AWARE OF CAME OUT THREE YEARS LATER.

03:16:22 7 Q. AND IF I COULD GET OUT, AND IF POSSIBLE HAND TO YOU THIS
03:16:28 8 FOR IDENTIFICATION, IT HAS BEEN MARKED EXHIBIT 5595; DO YOU
03:16:31 9 RECOGNIZE THIS?

03:16:32 10 A. I DO.

03:16:32 11 Q. WHAT IS THAT?

03:16:32 12 A. THAT IS THE GUTS, IT'S THE BOARD THAT'S INSIDE THE PIZZA
03:16:37 13 BOX OF THE 7148 SWITCH.

03:16:39 14 Q. OKAY.

03:16:42 15 MR. FERRALL: YOUR HONOR, IF I MAY ASK MR. HOLBROOK
03:16:43 16 TO COME DOWN FROM THE STAND TO --

03:16:45 17 THE COURT: THAT WOULD BE FINE, JUST KEEP YOUR VOICE
03:16:47 18 UP SO WE CAN ALL HEAR YOU.

03:16:49 19 THE WITNESS: OKAY.

03:16:51 20 Q. MR. HOLBROOK, I WOULD ASK YOU TO EXPLAIN TO THE JURY,
03:16:56 21 FIRST OF ALL, SOME OF THE KEY COMPONENTS OF THIS BOARD SUCH AS
03:17:01 22 THE PORTS AND THE CHIPS?

03:17:04 23 A. OKAY. SO THIS IS KIND OF THE GUTS OF THE SWITCH THAT
03:17:08 24 TYPICALLY WOULD SIT AT THE TOP OF A RACK OF 40 SERVERS, 40 TO
03:17:13 25 48 SERVERS UNDERNEATH IT.

03:17:14 1 AND EACH ONE WOULD HAVE -- EACH SERVER WOULD HAVE A PLUG
03:17:17 2 THAT CONNECTS INTO ONE OF THESE HOLES ON THE FRONT PANEL. AND
03:17:20 3 THAT'S HOW THE SERVERS CONNECT UP TO THE SWITCH.

03:17:23 4 AND THEN SOME OF THESE PORTS WOULD CONNECT OFF TO OTHER
03:17:27 5 SWITCHES AND ELSEWHERE IN THE NETWORK, AND THIS IS HOW THE
03:17:30 6 SERVER CONNECTS UP TO THE NETWORK.

03:17:32 7 SO THIS IS A BOARD THAT HAS, IT HAS SIX CHIPS ON IT HERE.
03:17:36 8 SO YOU CAN SEE WE HAVE ACTUALLY TAKEN THE HEAT SINKS OFF OF TWO
03:17:40 9 OF THEM. THESE TWO WOULD HAVE HEAT SINKS AS WELL.

03:17:43 10 SO THESE ARE THE SWITCHING CHIPS FROM A COMPANY CALLED
03:17:46 11 FULCRUM MICROSYSTEMS THAT WAS SELLING 24 PORT ETHERNET CHIPS AT
03:17:52 12 THE TIME.

03:17:53 13 THIS IS LIKE 2007, 2008 WHEN WE DESIGNED THIS. AND WE PUT
03:17:59 14 SIX OF THEM TOGETHER IN THIS SYSTEM TO BUILD A 48 PORT SWITCH.
03:18:06 15 IT'S KIND OF FUNNY BECAUSE YOU GO FROM 24 TO 48, YOU HAVE TO
03:18:10 16 PUT SIX, BECAUSE THAT'S BECAUSE MOST OF YOUR PORTS ARE ACTUALLY
03:18:13 17 INTERNAL AND YOU ONLY GET HALF OF THE ONES ON THESE FOUR CHIPS
03:18:17 18 PULLING TO THE FRONT. SO THAT'S WHY YOU GET 48 WITH SIX CHIPS.

03:18:20 19 Q. AND THE LET ME RETURN TO THAT FOR A SECOND, MR. HOLBROOK.

03:18:23 20 THE PORTS ARE THESE ITEMS ON THE FRONT; RIGHT?

03:18:27 21 A. THAT'S THESE HOLES HERE ARE THE PORTS.

03:18:29 22 Q. SO WHY IS IT SO DIFFICULT TO JUST PUT 48 PORTS ON THIS
03:18:38 23 PIZZA BOX SIZE DEVICE AND SELL IT?

03:18:40 24 A. RIGHT. WELL, YOU CAN SEE THERE'S NOT A LOT OF EXTRA ROOM
03:18:43 25 ON THIS BOARD. SO AT THE TIME, ENGINEERING-WISE, IT WAS

03:18:48 1 ACTUALLY FAIRLY CHALLENGING TO DO THIS.

03:18:50 2 SO FULCROM WHICH WAS THE CHIP VENDOR, WASN'T SURE, THEY
03:18:54 3 WERE SKEPTICAL THAT WE WOULD BE ABLE TO PUT SIX CHIPS ON A
03:18:58 4 BOARD AND DELIVER POWER TO THEM AND COOL THEM, EACH OF THEM IS
03:19:02 5 LIKE 50 OR 60 WATTS.

03:19:04 6 SO THE WHOLE SYSTEM WAS ABOUT 500 WATTS. YOU THINK ABOUT
03:19:08 7 HOW MUCH HEAT IS GENERATED BY 500 WATT LIGHT BULBS INSIDE THE
03:19:17 8 PIZZA BOX, IT'S AN AWFUL LOT OF HEAT INSIDE A SMALL SPACE.

03:19:23 9 AND SO THERE WAS ACTUALLY SOME SOPHISTICATED COOLING
03:19:26 10 TECHNOLOGY THAT WE HAD TO HAVE, SO WE ACTUALLY FOUND A FAN
03:19:29 11 COMPANY IN SOUTHERN CALIFORNIA THAT MADE REALLY HIGH POWERED
03:19:32 12 FANS ON THE BACK TO SUCK THE HEAT OUT OF THIS SYSTEM TO KEEP
03:19:37 13 THESE THINGS COOL FROM OVERHEATING.

03:19:39 14 Q. NOW MR. HOLBROOK, YOU MENTIONED THAT THE CHIPS ARE,
03:19:44 15 HAVE -- THEY, THEMSELVES, HAVE 24 PORTS PER CHIP?

03:19:47 16 A. RIGHT.

03:19:48 17 Q. BUT YOU ONLY HAVE 48 TOTAL ON THE SWITCH?

03:19:52 18 A. RIGHT.

03:19:53 19 Q. SO WITHOUT GETTING INTO ELECTRONICS, WHY DO YOU NEED SIX
03:20:02 20 24-PORT CHIPS TO DO ONE 48-PORT SWITCH?

03:20:05 21 A. WELL, IT'S BECAUSE ON THESE FOUR CHIPS, THERE ARE 12 PORTS
03:20:10 22 EACH TO THE FRONT PANEL AND THOSE ARE 12, PLUS 12, PLUS 12,
03:20:15 23 PLUS 12 IS 48. SO THOSE ARE THE 48 THAT COME OUT.

03:20:18 24 12 GO TO THE BACK FROM EACH OF THESE, TO INTERCONNECT
03:20:22 25 THESE FOUR CHIPS. AND THEN THESE TWO SERVE NO PURPOSE EXCEPT

TO INTERCONNECT THESE FOUR.

SO I HAVE TO SORT OF PUT SIX TIMES AS MANY CHIPS IN ORDER
TO DOUBLE THE FRONT PANEL CAPACITY.

AND THIS WAS REALLY DIFFICULT FOR ME TO WRAP MY HEAD
AROUND THE FIRST TIME I HEARD ABOUT IT. BUT IT'S KIND OF
STANDARD IN THE INDUSTRY NOW.

Q. AND WHAT SORT OF ENGINEERING DID ARISTA HAVE TO DO IN
ORDER TO MAKE THOSE SIX CHIPS WORK?

A. WELL, I MEAN, I THINK MAKING THESE WORK INSIDE THE EOS
WASN'T ALL THAT EASY. WHEN YOU BUY THESE CHIPS, THEY COME FROM
THE CHIP VENDOR WITH SOME SOFTWARE TO CONTROL THEM, TO JUST
READ AND WRITE THE MEMORIES AND TABLES INSIDE THEM, BUT IT
DOESN'T PUT THEM INTO A SYSTEM.

SO YOU'VE GOT TO BUILD THEM INTO A SYSTEM, INTEGRATE THEM,
WE RAN LINUX ON THIS, SO THIS IS A PROCESSOR, THIS IS JUST AN
X86 PROCESSOR LIKE YOU MIGHT HAVE IN YOUR LAPTOP OR DESKTOP
COMPUTER HERE.

AND TO INTEGRATE THESE CHIPS AND MAKE THEM LOOK KIND OF TO
LINUX, WELL TO THE SOFTWARE, TO MAKE THEM APPEAR TO THE
SOFTWARE IN THE WAY THAT THE SOFTWARE CAN EFFECTIVELY USE THEM,
REQUIRED A BUNCH OF ENGINEERING.

LOAD BALANCING THE TRAFFIC ACROSS THE INTERNAL LINKS AND
GETTING IT TO FLOW RIGHT WAS A BUNCH OF ENGINEERING. YOU
COULDN'T JUST TAKE THESE CHIPS AND PLOP THEM DOWN ON THE BOARD
AND GET A SWITCH, THERE WAS A SUBSTANTIAL SOFTWARE EFFORT.

03:21:48 1 Q. DID -- TO YOUR KNOWLEDGE, DID ANY OTHER SWITCH
03:21:51 2 MANUFACTURER HAVE A 48-PORT 10 GIGABIT ETHERNET SWITCH IN THIS
03:21:58 3 TIME?
03:21:58 4 A. NO.
03:21:59 5 Q. AND TO BE CLEAR, WHAT TIME FRAME ARE WE TALKING ABOUT WHEN
03:22:02 6 ARISTA INTRODUCED THIS?
03:22:03 7 A. I THINK THIS WAS INTRODUCED IN THE SUMMER OF 2008.
03:22:06 8 Q. AND TO YOUR KNOWLEDGE, HOW LONG DID IT TAKE BEFORE ANOTHER
03:22:11 9 10 GIGABIT 48-PORT SWITCH ENTERED THE MARKET?
03:22:14 10 A. I THINK IT WAS THREE YEARS LATER WHEN SILICON TECHNOLOGY
03:22:18 11 ADVANCED, SO THERE WAS A SINGLE CHIP, 48-SWITCH CHIP THAT COULD
03:22:22 12 DO 48 PORTS, BUT NO ONE ELSE BUILT THIS AT THAT TIME. AND IT
03:22:26 13 WAS ACTUALLY FAIRLY EYE OPENING FOR THE INDUSTRY.
03:22:30 14 Q. WHAT SORT OF REACTION -- YOU COULD PUT THIS DOWN AND
03:22:33 15 RETURN TO YOUR STAND, PLEASE.
03:22:41 16 MR. HOLBROOK, WHAT SORT OF REACTION DID YOU GET FROM THE
03:22:45 17 THIRD PARTIES OR THE OUTSIDE WORLD TO THIS SWITCH WHEN YOU
03:22:51 18 INTRODUCED IT?
03:22:52 19 A. WE INTRODUCED THIS TO SUPER COMPETING 07 WHICH IS A BIG
03:22:55 20 CONFERENCE OF HIGH PERFORMANCE COMPUTING IN THE INDUSTRY
03:22:58 21 CONFERENCE, IT'S PRETTY WELL ATTENDED.
03:23:02 22 AND WHAT I HEARD WAS PEOPLE WERE CALLING IT A GOD BOX.
03:23:05 23 Q. AND DID YOU HEAR ANY OTHER REACTION FROM CUSTOMERS OR
03:23:10 24 POTENTIAL CUSTOMERS ABOUT THIS?
03:23:11 25 A. YEAH, CUSTOMERS WERE VERY EXCITED ABOUT IT.

03:23:13 1 Q. AND WHAT DID THE CHIP MANUFACTURER, DID THEY PROVIDE ANY
03:23:19 2 REACTION?

03:23:19 3 A. WELL, AS I SAID, THEY -- THEY DIDN'T THINK WE COULD PUT IT
03:23:25 4 TOGETHER. WE ACTUALLY HAD ONE CUSTOMER THAT WAS ACTUALLY VERY
03:23:27 5 INTERESTED IN THIS AND THEY WERE A BIG WEB COMPANY IN SILICON
03:23:32 6 VALLEY. AND THEY WERE VERY INTERESTED IN THE PRODUCT, USING
03:23:35 7 IT, AND WE KNOW THAT THEY WERE ACTUALLY BUILDING THEIR OWN
03:23:38 8 SWITCHES AS WELL.

03:23:39 9 AND THEY LOOKED AT THE BOARD, AND THIS IS WHEN WE HAD
03:23:43 10 PROTOTYPES, WE INTRODUCED THEM TO OUR LAB AND WE WERE TALKING
03:23:46 11 TO THEM ABOUT HOW WE WERE GOING TO BUILD THIS AND THEY SAID,
03:23:49 12 YOU CAN'T BUILD THAT. AND WE SAID WELL, WE ARE PRETTY SURE WE
03:23:53 13 CAN.

03:23:53 14 Q. WHAT DID YOU UNDERSTAND THEM TO MEAN WHEN THEY SAID YOU
03:23:55 15 CAN'T BUILD IT?

03:23:56 16 A. WELL, THIS WAS THEIR SIGNAL INTEGRITY EXCERPT WHO CAME IN,
03:24:01 17 ALONG WITH THEIR HARDWARE TEAM AND THEY SAID, THAT'S -- IT'S
03:24:04 18 IMPOSSIBLE TO BUILD IT. WE'VE LOOKED AT THE ELECTRICAL
03:24:07 19 CHARACTERISTICS OF THE CHIPS YOU ARE USING AND YOU WON'T BE
03:24:10 20 ABLE TO RUN THEM THAT FAR, IT WON'T WORK, YOU WON'T BE ABLE TO
03:24:14 21 DRIVE A THREE-METER CONNECTION OUT THE FRONT PANEL, YOU WON'T
03:24:17 22 BE ABLE TO MEET THE NEEDS FOR OUR PURPOSES.

03:24:19 23 Q. AND WHAT DID YOU DO IN RESPONSE?

03:24:22 24 A. WELL, WE SAID, WOULD YOU LIKE TO SEE IT? AND SO WE TOOK
03:24:27 25 THEM INTO OUR LAB AND SHOWED THEM THAT SWITCH OR, YOU KNOW,

03:24:31 1 ANOTHER VERSION OF IT, HOOKED UP WITH TEN CABLES RUNNING ON ALL
03:24:36 2 THE PORTS AND THEN THEY BELIEVED US.

03:24:39 3 Q. OKAY. ALL RIGHT. I WOULD LIKE TO TURN NOW TO EOS AND
03:24:44 4 TALK ABOUT THAT FOR A LITTLE BIT.

03:24:46 5 AND TO HELP OUR DISCUSSION, IF WE COULD PULL UP A SLIDE
03:24:51 6 FROM EXHIBIT 267. IT'S 267 IN YOUR BOOK, IN YOUR NOTEBOOK.
03:24:59 7 AND I THINK WE ARE LOOKING AT THE PAGE 85.

03:25:07 8 MR. FERRALL: THIS IS JUST A DEMONSTRATIVE,
03:25:08 9 YOUR HONOR.

03:25:12 10 A. OKAY.

03:25:12 11 Q. DO YOU RECOGNIZE THIS?

03:25:13 12 A. I DO.

03:25:14 13 Q. AND CAN YOU TELL US WHAT IT IS, PLEASE?

03:25:16 14 A. SO THIS IS A PAGE FROM A PRESENTATION THAT I HAVE BEEN
03:25:21 15 GIVING FOR AT LEAST FIVE YEARS, I WOULD SAY, TO NEW ENGINEERS
03:25:25 16 THAT SHOW UP AT ARISTA.

03:25:26 17 WE HAVE A SORT OF A TRAINING SERIES TO NEW ENGINEERS AT
03:25:31 18 ARISTA EVERY, THE FIRST SIX WEEKS THEY GET A BUNCH OF TALKS TO
03:25:35 19 DIFFERENT PEOPLE, AND I GIVE ONE OF THOSE TALKS AND THIS IS A
03:25:37 20 PAGE TALKING ABOUT EOS.

03:25:39 21 Q. THE FIRST BULLET POINT SAYS, "SUPPORT MESSING WITH EOS,"
03:25:42 22 WHAT DO YOU MEAN BY THAT?

03:25:43 23 A. WELL, I MEAN, THE TITLE IS EXTENSIBILITY. SO I MEAN, EOS
03:25:46 24 STANDS FOR THE EXTENSIBLE OPERATING SYSTEM.

03:25:49 25 SO THIS IS TALKING ABOUT WAYS THAT YOU COULD EXTEND EOS.

03:25:54 1 SO THIS WAS LETTING CUSTOMERS USE EOS AND MODIFY IT, CUSTOMIZE
03:25:59 2 IT FOR THEIR OWN PURPOSES.

03:26:01 3 Q. WHAT ABOUT EOS MAKES IT EXTENSIBLE?

03:26:04 4 A. WELL, THERE'S A NUMBER OF THINGS, BUT I THINK IT WAS THE
03:26:08 5 WAY THAT WE EXPOSED LINUX TO CUSTOMERS. IT WAS THE
03:26:14 6 PROGRAMMABLE API'S THAT WE ADDED TO THE SYSTEM TO ALLOW OUR
03:26:18 7 CUSTOMERS TO PROGRAM IT. IT WAS THE CHOICE OF WHICH FLAVOR OF
03:26:22 8 LINUX WE USED.

03:26:24 9 Q. HAVE YOU EVER PREPARED A DEMONSTRATION OF SORTS FOR
03:26:30 10 CUSTOMERS ABOUT HOW YOU CAN EXTEND EOS?

03:26:33 11 A. YEAH, I HAVE MULTIPLE TIMES.

03:26:35 12 Q. IF WE COULD LOOK AT THE SLIDE WE HAVE PREPARED FROM
03:26:40 13 EXHIBIT 7724. I THINK IT'S FROM THE LAST PAGE OF THAT EXHIBIT,
03:26:50 14 YEAH, THERE YOU GO.

03:26:51 15 DO YOU RECOGNIZE THIS?

03:26:52 16 A. YES, I DO. THIS IS A PROGRAM, A LITTLE PROGRAM THEY WROTE
03:26:58 17 CALLED SENDPAGE.COM.

03:27:03 18 Q. TO BE CLEAR, THIS IS A LITTLE COMPUTER PROGRAM?

03:27:06 19 A. YES.

03:27:08 20 Q. ALL RIGHT.

03:27:09 21 A. THAT RUNS ON EOS.

03:27:10 22 Q. WHY DID YOU PREPARE THIS LITTLE PROGRAM?

03:27:12 23 A. SO THIS WAS AN EXAMPLE OF A RELATIVELY SHORT COMPUTER
03:27:17 24 PROGRAM THAT YOU COULD USE TO CUSTOMIZE EOS THAT A CUSTOMER
03:27:21 25 MIGHT ACTUALLY BE ABLE TO WRITE THEMSELVES.

03:27:24 1 Q. SO TO BE CLEAR, DOES THIS PROGRAM COME WITH EOS?

03:27:29 2 A. NO.

03:27:30 3 Q. SO THE PURPOSE OF THIS DEMONSTRATION THAT YOU HAD WAS FOR
03:27:33 4 WHAT?

03:27:33 5 A. WELL, THIS WAS TO SHOW A CUSTOMER HOW WITH A RELATIVELY
03:27:37 6 SIMPLE PROGRAM YOU COULD EXTEND EOS TO ADD SOME NEW
03:27:41 7 FUNCTIONALITY THAT WASN'T CONTEMPLATED BY US, THE SOFTWARE TEAM
03:27:46 8 THAT WROTE AND SOLD THE EOS.

03:27:48 9 Q. AND WHAT DID THIS LITTLE PROGRAM DO?

03:27:50 10 A. WELL, IT WAS A FAIRLY SIMPLE THING. SO THIS PROGRAM WAS
03:27:55 11 SIMPLE BUT POWERFUL, SO THIS PROGRAM WOULD, WHEN YOU PULLED OUT
03:28:00 12 A CABLE OUT OF THE FRONT PANEL OR WHEN A SERVER WOULD CRASH, IT
03:28:04 13 SENDS AN E-MAIL. AND IT CAN SEND AN E-MAIL TO -- BACK IN THOSE
03:28:09 14 DAYS, PEOPLE CARRIED A PAGER. SO WHEN YOU WERE A NETWORK
03:28:13 15 OPERATOR, YOU WOULD GET A PAGE WHEN A SERVER WENT DOWN.

03:28:16 16 Q. NOW TO YOUR KNOWLEDGE, DID OTHER NETWORK OPERATING SYSTEMS
03:28:22 17 AT THIS TIME HAVE THE ABILITY TO ADD A PROGRAM LIKE THIS?

03:28:25 18 A. NO. AS FAR AS I KNOW, WE WERE UNIQUE IN THAT REGARD.

03:28:27 19 Q. AND WHEN DID YOU PREPARE THIS, BY THE WAY?

03:28:31 20 A. 2007, I THINK.

03:28:32 21 Q. SO EARLY AT ARISTA?

03:28:33 22 A. YEAH.

03:28:34 23 Q. NOW IF YOU -- IN OTHER OPERATING SYSTEMS AT THE TIME, IF
03:28:42 24 YOU COULDN'T ADD YOUR OWN EXTENSIONS, HOW WOULD YOU BE ABLE TO
03:28:45 25 ADD FUNCTIONALITY TO THE OPERATING SYSTEM?

03:28:46 1 A. WELL, YOU HAD TO GET THE VENDOR INVOLVED. SO YOU WOULD
03:28:49 2 HAVE TO CALL UP THE SWITCH VENDOR AND EXPRESS WHAT YOU WOULD
03:28:55 3 LIKE IT TO DO, GO BACK AND FORTH. THEY MIGHT START WORKING ON
03:28:59 4 IT. THEY WOULD DEVELOP IT, SIX MONTHS LATER IT MIGHT APPEAR IN
03:29:02 5 RELEASE, AND YOU MIGHT DEPLOY IT IN YOUR NETWORK A YEAR LATER
03:29:06 6 IF YOU WERE AN IMPORTANT ENOUGH CUSTOMER AND IF THEY THOUGHT IT
03:29:09 7 WAS WORTHWHILE FOR YOU TO BUILD THAT FEATURE FOR YOU.

03:29:11 8 Q. AND IF WE COULD GO BACK THEN TO THE PREVIOUS SLIDE WE
03:29:16 9 LOOKED AT EXTENSIBILITY.

03:29:20 10 THE LAST BULLET POINT HERE SAYS, "HUGE QUESTION IS CAN WE
03:29:24 11 SUPPORT THIS," WHAT DID YOU MEAN BY THAT?

03:29:27 12 A. SO THIS WAS AN INTERNAL DEBATE WITH RESPECT TO ALLOWING
03:29:31 13 CUSTOMERS TO EXTEND EOS. SO THE FEAR WAS THAT IF A CUSTOMER
03:29:35 14 EXTENDED EOS, THAT THAT COULD CREATE PROBLEMS, LIKE THEY COULD
03:29:39 15 INTERFERE WITH THINGS THAT WE WERE DOING INSIDE EOS AND WE KIND
03:29:43 16 OF WOULD STEP ON EACH OTHER AND THE SWITCH WOULD BE BROKEN.

03:29:46 17 AND THEN THE CUSTOMER WOULD CALL US UP OR CALL OUR SUPPORT
03:29:49 18 LINE AND SAY, HEY, MY SWITCH ISN'T WORKING, AND WE WOULDN'T
03:29:53 19 KNOW HOW TO FIX IT BECAUSE WE DIDN'T KNOW WHAT KIND OF CHANGES
03:29:56 20 THEY MIGHT HAVE MADE AND WE WERE OPENING UP ALL OF EOS AND ALL
03:29:59 21 OF LINUX TO THE CUSTOMERS TO MODIFY IT.

03:30:01 22 SO THAT WAS THE "CAN WE SUPPORT THIS QUESTION," WILL WE
03:30:05 23 LITERALLY BE ABLE TO SUPPORT THE CUSTOMERS WHEN THEY CHANGE IT.

03:30:08 24 Q. WHAT DID YOU LEARN AS AN ANSWER TO THIS QUESTION, IF YOU
03:30:11 25 WILL?

03:30:11 1 A. WELL, I MEAN, THIS WAS KIND OF THROUGH DISCUSSIONS AND
03:30:14 2 THROUGH OUR EXPERIENCE, THIS WAS ACTUALLY AN UNFOUNDED CONCERN.

03:30:19 3 IF YOU THINK ABOUT IT, OTHER OPERATING SYSTEM VENDORS LIKE
03:30:23 4 APPLE AND MICROSOFT, THEY DON'T TELL CUSTOMERS, YOU CAN'T RUN
03:30:27 5 SOFTWARE ON OUR PRODUCTS, WE WON'T BE ABLE TO SUPPORT YOU, IT
03:30:31 6 MIGHT BREAK SOMETHING.

03:30:32 7 AND THAT'S CRAZY, RIGHT, YOU BUY AN APPLE LAPTOP AND YOU
03:30:35 8 CAN'T INSTALL SOFTWARE ON IT. AND WHY SHOULD SWITCH VENDORS BE
03:30:39 9 ANY DIFFERENT BECAUSE FUNDAMENTALLY, IT'S JUST AN OPERATING
03:30:42 10 SYSTEM. LINUX ISN'T THAT DIFFERENT FROM MAC OS OR WINDOWS,
03:30:45 11 IT'S JUST ANOTHER OPERATING SYSTEM.

03:30:46 12 AND WE SAID, WE SHOULD BE ABLE TO SUPPORT THIS. AND IN
03:30:50 13 FACT, WE HAVE BEEN ABLE TO BECAUSE THE CUSTOMERS HAVE BEEN
03:30:53 14 INSTALLING THESE EXTENSIONS ON THEIR SWITCH, DON'T ACTUALLY
03:30:57 15 BREAK THINGS.

03:30:57 16 I MEAN, IN WINDOWS I CAN GO IN OR IN THE MAC OS I CAN GO
03:31:04 17 IN AND DELETE ALL KINDS OF FILES THAT WOULD MAKE MY SYSTEM
03:31:07 18 NONOPERATIONAL, BUT PEOPLE DON'T HAVE ANY INTEREST IN DOING
03:31:16 19 THAT BECAUSE OUR CUSTOMERS AREN'T INTERESTED IN BEING ON THE
03:31:20 20 PHONE WITH OUR TECH SUPPORT, WHILE WE FIGURE OUT WHAT'S WRONG
03:31:24 21 WITH THEIR SYSTEM.

03:31:25 22 Q. OKAY. LINUX HAS BEEN DISCUSSED?

03:31:27 23 A. YES.

03:31:28 24 Q. A NUMBER OF TIMES. AND DO YOU HAVE ANY EXAMPLES YOU COULD
03:31:34 25 GIVE ABOUT HOW ARISTA'S USE OF LINUX HAS BEEN A BENEFIT TO

03:31:40 1 CUSTOMERS?

03:31:41 2 A. OH, SURE. WELL, SO ONE EXAMPLE, AND IT'S NOT JUST LINUX
03:31:47 3 BUT IT'S, IT'S THE PARTICULAR WAY WE INTEGRATED LINUX, BUT WE
03:31:52 4 MADE IT POSSIBLE FOR OUR CUSTOMERS TO USE OPEN SOURCE LINUX
03:31:55 5 SOFTWARE.

03:31:58 6 SO THERE'S ONE PARTICULAR PHONE CALL THAT I REMEMBER WITH
03:32:00 7 ONE OF THE NEW YORK BANKS, I THINK IT WAS MERRILL LYNCH, IN
03:32:04 8 2008 OR 2009, 2007, I'M NOT SURE, WHERE THEY WERE ON THE PHONE
03:32:09 9 AND THAT ASKED IF WE SUPPORTED SOMETHING CALLED PTP, WHICH
03:32:13 10 STANDS FOR THE PRECISION TIME KEEPING PROTOCOL.

03:32:15 11 IT'S A WAY TO SYNCHRONIZE THE CLOCK OF A COMPUTER VERY
03:32:18 12 ACCURATELY. AND I HAD NEVER HEARD OF IT AND I SAID NO, SORRY,
03:32:21 13 WE DON'T SUPPORT PTP. AND SO THE CALL ENDED.

03:32:23 14 THEN AFTER THE CALL I SAID, MAYBE I SHOULD LOOK INTO PTP.
03:32:27 15 SO I LITERALLY GOOGLED PTP, AND IT TOOK ME TO A WEBSITE WHICH
03:32:32 16 WAS PTP.ORG. AND I WENT TO PTP.ORG AND IT HAD, YOU KNOW, A
03:32:37 17 SMALL WEB FRONT END AND IT HAD A READ ME FILE AND CLICK HERE TO
03:32:41 18 DOWNLOAD SOFTWARE.

03:32:42 19 SO I DOWNLOADED THIS SOFTWARE ONTO MY LAPTOP, UNPACKED IT,
03:32:46 20 COMPILED IT, AND THEN COPIED THE EXECUTABLE BINARY TO OUR
03:32:52 21 SWITCH AND STARTED THE PROGRAM.

03:32:54 22 AND THAT WAS LIKE ALL IN THE SPACE OF AN HOUR GOING FROM,
03:32:58 23 I NEVER LITERALLY HEARD OF PTP, TO HAVING IT RUNNING AS A
03:33:01 24 FEATURE ON OUR SWITCH.

03:33:03 25 AND THEN I CALLED BACK THE ACCOUNT TEAM AND SAID WAIT, NO,

03:33:06 1 I TOLD YOU THAT WE DIDN'T SUPPORT PTP, I THINK WE ACTUALLY CAN.
03:33:10 2 AND THAT'S, FOR ME, WAS A MOMENT WHERE I'M LIKE, WE ARE ON TO
03:33:15 3 SOMETHING, LIKE, THIS IS REALLY NEAT.

03:33:17 4 Q. WAS THAT SIMILAR BEHAVIOR AVAILABLE IN OTHER NETWORK
03:33:25 5 OPERATING SYSTEMS, TO YOUR KNOWLEDGE?

03:33:26 6 A. NONE THAT I KNOW OF.

03:33:28 7 Q. IF WE COULD PUT UP, MR. DAHM, THE SECOND, THE THIRD
03:33:33 8 DEMONSTRATIVE PAGE THAT WE HAD FOR MR. HOLBROOK. SORRY, NO
03:33:37 9 IT'S THE VARIOUS FEATURES.

03:33:41 10 THERE WE GO. DO YOU RECOGNIZE THIS, MR. HOLBROOK?

03:33:44 11 A. YES, I DO.

03:33:44 12 Q. WHAT IS IT, PLEASE?

03:33:46 13 A. WELL, THIS IS A DESCRIPTION OF A BUNCH OF KIND OF
03:33:50 14 NONTRADITIONAL FEATURES THAT WE SUPPORT IN EOS.

03:33:54 15 Q. ARE THESE FEATURES THAT ARISTA USED FROM SOME OTHER SOURCE
03:34:05 16 OR DID THEY DEVELOP THEM THEMSELVES?

03:34:07 17 A. THESE ARE ALL THE FEATURES WE DEVELOPED AT ARISTA, KIND OF
03:34:11 18 AS FEATURES OF ARISTA EOS THAT I DO NOT THINK AT THE TIME WERE
03:34:14 19 SUPPORTED ANYWHERE ELSE.

03:34:15 20 Q. OKAY. I WANT TO JUST TALK ABOUT A COUPLE OF THEM IN THE
03:34:17 21 TIME THAT WE HAVE.

03:34:21 22 LANZ IS THE SECOND ONE. CAN YOU TELL THE JURY WHAT A LANZ
03:34:26 23 IS?

03:34:26 24 A. SURE. SO LANZ IS SORT OF A CONTRACTION OF LATENCY
03:34:32 25 ANALYZER. SO LATENCY IS ABOUT TIME DELAYS. SO WHAT THIS

03:34:38 1 FEATURE WAS ABOUT WAS DETECTING PACKETS, TRAFFICKED THROUGH A
03:34:43 2 SWITCH, THAT WAS DELAYED BY VERY SMALL AMOUNTS OF TIME.

03:34:47 3 SO AS NETWORKS GET HIGHER AND HIGHER SPEED, I CAN HAVE
03:34:50 4 PACKETS DROPPED DUE TO CONGESTION EVENTS OR DUE TO CONGESTION
03:34:56 5 INSIDE THE SWITCH THAT MIGHT ONLY LAST FOR A MICROSECOND OR
03:35:00 6 TWO, LIKE A MILLIONTH OF A SECOND.

03:35:03 7 AND DETECTING THOSE IN TRADITIONAL WAYS BY LOOKING AT
03:35:06 8 COUNTERS AND CHECKING TO SEE IF THE SWITCH IS CONGESTED AT EACH
03:35:08 9 POINT IN TIME, YOU WILL NEVER SEE IT IF IT ONLY HAPPENS ARE FOR
03:35:13 10 A MILLIONTH OF A SECOND.

03:35:13 11 Q. AND LET ME ASK YOU, MR. HOLBROOK, WHY DOES THAT MATTER IF
03:35:16 12 IT'S ONLY DELAYED FOR MILLIONTH OF A SECOND, SO WHAT?

03:35:19 13 A. WELL, IT'S NOT THE -- THE DELAY IS FOR -- VERY SHORT
03:35:24 14 DELAYS CAN RESULT IN PACKET DROPS WHICH CAN HAVE MEANINGFUL
03:35:29 15 IMPACTS ON CUSTOMER'S APPLICATIONS IF THEY ARE NOT EXPECTING
03:35:34 16 THEIR PACKETS TO BE DROPPED.

03:35:36 17 THIS WAS IMPORTANT IN HIGH PERFORMANCE COMPUTING AND SOME
03:35:39 18 FINANCIAL APPLICATIONS, RELIABLE, ALWAYS ON TIME DELIVERY
03:35:41 19 WITHOUT DELAYS, WELL, CUSTOMERS DIDN'T DESIGN THEIR NETWORKS
03:35:45 20 WITH THE EXPECTATION THAT THEY WOULD GET THAT, AND THEY WANTED
03:35:48 21 TO KNOW IF THEY WERE EVER EXPERIENCING DELAYS OR DROPS THAT WE
03:35:51 22 COULDN'T OTHERWISE SEE.

03:35:52 23 Q. SO DOES ARISTA HAVE ANY INTELLECTUAL PROPERTY ASSOCIATED
03:35:55 24 WITH THIS LATENCY ANALYZER FEATURE?

03:35:57 25 A. YES, WE FILED A PATENT ON THIS.

03:36:00 1 Q. AND DO YOU HAVE ANY INVOLVEMENT IN THAT?

03:36:02 2 A. YEAH. I WAS ONE OF THE INVENTORS, ALONG WITH
03:36:06 3 ANSHUL SADANA AND KEN DUDA.

03:36:08 4 Q. THE NEXT ITEM I WANTED TO TALK ABOUT BRIEFLY IS ZTP. CAN
03:36:12 5 YOU TELL THE LADIES AND GENTLEMEN OF THE JURY WHAT THAT IS?

03:36:14 6 A. YES, ZTP IS ANOTHER FEATURE WE DEVELOPED AT ARISTA, AND IT
03:36:18 7 STANDS FOR ZERO TOUCH PROVISIONING.

03:36:21 8 SO THE IDEA BEHIND ZTP WAS TO SIMPLIFY THE INSTALLATION OF
03:36:30 9 LARGE DATA CENTERS WITH LOTS AND LOTS OF SWITCHES IN THEM AND
03:36:35 10 ALLOW SOMEONE TO INSTALL A SWITCH, PLUG IT IN AND THEN HAVE IT
03:36:39 11 JUST WORK.

03:36:40 12 Q. CAN YOU GIVE AN EXAMPLE OF HOW ZTP HAS BEEN USED BY A
03:36:45 13 CUSTOMER OF ARISTA'S?

03:36:46 14 A. YEAH, ACTUALLY THERE WAS A CUSTOMER THAT JUST A COUPLE OF
03:36:48 15 MONTHS AGO, TOLD ME THAT THEY INSTALLED A 10,000 SQUARE FOOT
03:36:53 16 DATA CENTER WITH 136 RACKS, I THINK, AND 22 SPINE SWITCHES IN
03:36:57 17 IT.

03:36:59 18 AND IT TOOK THEM TWO HOURS TO POWER IT ALL ON, GET ALL OF
03:37:03 19 THE SWITCHES CONFIGURED BECAUSE THEY DIDN'T USE ZTP, AMONG
03:37:06 20 OTHER THINGS.

03:37:07 21 Q. HOW WOULD THAT COMPARE TO A WAY OF PROVISIONING A NETWORK
03:37:11 22 OF THAT SIZE WITHOUT ZTP?

03:37:13 23 A. WELL, THE OLD WAY WAS TO PLUG A SWITCH IN, CONNECT A CABLE
03:37:17 24 TO IT, TYPE SOMETHING IN AT THE CONSOLE, AND THEN CHECK THAT IT
03:37:21 25 WAS PROPERLY CONFIGURED AND THEN MOVE ON TO THE NEXT ONE.

03:37:25 1 AND THIS PARTICULAR CUSTOMER TOLD US THAT IT HAD TAKEN
03:37:28 2 THEM ABOUT TWO WEEKS THE LAST TIME THEY BROUGHT UP A DATA
03:37:31 3 CENTER BEFORE THEY HAD DONE ALL THE WORK WITH ZTP.

03:37:34 4 Q. OKAY. LAST ONE. OUR TIME IS LIMITED.

03:37:37 5 CLOUD VISION. CAN YOU TELL US WHAT CLOUD VISION IS?

03:37:39 6 A. YEAH. SO CLOUD VISION IS A FEATURE THAT ARISTA DEVELOPED
03:37:43 7 TO MANAGE A CLOUD OF NETWORK SWITCHES. SO MANAGE A CLOUD
03:37:51 8 NETWORK.

03:37:52 9 SO CUSTOMERS THAT HAVE A LOT OF SWITCHES LIKE TO AUTOMATE
03:37:57 10 THE MANAGEMENT OF THESE LARGE NUMBER OF SWITCHES. SO ONE OF
03:38:00 11 THE THINGS THAT CLOUD VISION PROVIDES IS I CAN MAKE A
03:38:05 12 CONFIGURATION CHANGE, I CAN SCHEDULE A CONFIGURATION CHANGE,
03:38:09 13 TRACK THAT, GET IT APPROVED BECAUSE MAKING CONFIGURATION
03:38:12 14 CHANGES IN THE LARGE NETWORK OFTEN REQUIRES SOME APPROVAL, GET
03:38:16 15 IT APPROVED INSIDE THE APPLICATION, AND THEN PUSH ONE BUTTON
03:38:19 16 AND HAVE THAT CONFIGURATION CHANGE APPLIED TO EVERY SINGLE
03:38:23 17 SWITCH IN MY DATA CENTER. IT MIGHT BE EVERY TOP OF RACK IN THE
03:38:27 18 DATA CENTER, FOR INSTANCE.

03:38:30 19 ANOTHER ASPECT OF CLOUD VISION IS IT HAS AUTOMATED ROLL
03:38:34 20 BACK. SO SOMETIMES NETWORK OPERATORS FIND THEMSELVES IN A
03:38:38 21 SITUATION WHERE THEY ARE CONFIGURING A BIG NETWORK OVER A
03:38:40 22 WEEKEND AND THEY HAVE TO BE DONE BY SUNDAY. AND THEY JUST
03:38:44 23 DISCOVERED THAT SOMETHING WENT WRONG, SOMETHING FAILED OR A
03:38:48 24 SWITCH FAILED OR THEY DIDN'T HAVE THE THING THEY NEEDED.

03:38:51 25 CLOUD VISION HAS A ROLL BACK FEATURE WHERE I CAN ROLL BACK

03:38:55 1 TO WHERE I STARTED, I'M GOING TO TRY THIS AGAIN NEXT WEEKEND.

03:38:58 2 MR. FERRALL: I HAVE NO FURTHER QUESTIONS,
03:39:00 3 YOUR HONOR.

03:39:00 4 THE COURT: THANK YOU.

03:39:01 5 MR. NELSON, CROSS-EXAMINATION?

03:39:03 6 MR. NELSON: SURE. THANK YOU, YOUR HONOR.

03:39:29 7 **CROSS-EXAMINATION**

03:39:30 8 BY MR. NELSON:

03:39:39 9 Q. GOOD AFTERNOON, DR. HOLBROOK?

03:39:41 10 A. NOBODY CALLS ME DOCTOR. MR. HOLBROOK IS FINE.

03:39:44 11 Q. OKAY. I JUST WANT TO MAKE SURE I GET IT RIGHT.

03:39:46 12 THANK YOU, SIR.

03:39:47 13 SO WE HAVEN'T MET BEFORE. MY NAME IS DAVE NELSON AND I
03:39:51 14 REPRESENT CISCO IN THE CASE, AND I JUST HAVE A FEW QUESTIONS
03:39:53 15 FOR YOU, OKAY?

03:39:54 16 A. OKAY.

03:39:54 17 Q. CAN YOU TURN TO EXHIBIT 6095 IN YOUR BINDER. IT SHOULD BE
03:39:59 18 IN FRONT OF YOU.

03:40:01 19 MR. FERRALL: SORRY, COUNSEL, I DIDN'T GET A BINDER.

03:40:04 20 MR. NELSON: IT'S YOUR BINDER, THE ONE YOU ASKED
03:40:07 21 FROM.

03:40:07 22 MR. FERRALL: OH, THANK YOU.

03:40:08 23 MR. NELSON: THE ONE YOUR COUNSEL GAVE YOU.

03:40:11 24 THE WITNESS: 6095.

03:40:19 25 Q. 6095.

03:40:20 1 A. OH, OKAY. OKAY.

03:40:25 2 Q. ARE YOU THERE?

03:40:26 3 A. YEAH.

03:40:27 4 Q. SO THIS IS, AND WE'VE HEARD A BIT ABOUT THIS, I THINK
03:40:30 5 TODAY, THIS IS AN ARISTA PRESENTATION SUMMARIZING A NETWORK
03:40:36 6 WORLD TEST REPORT FROM 2010; IS THAT RIGHT?

03:40:40 7 A. THAT COULD BE, I MEAN, I WOULD HAVE TO LOOK AT IT.

03:40:45 8 MR. FERRALL: OBJECTION, YOUR HONOR. OUTSIDE THE
03:40:46 9 SCOPE.

03:40:48 10 THE COURT: ARE YOU GOING TO RELATE IT TO THE DIRECT?

03:40:50 11 MR. NELSON: SURE. HE TALKED ABOUT EXTENSIBILITY AND
03:40:53 12 THINGS LIKE THAT THAT ARE IN THERE.

03:40:54 13 THE COURT: OKAY. PLEASE GO AHEAD. OVERRULED.

03:40:56 14 MR. NELSON: OKAY.

03:40:57 15 Q. SO SIR, IF YOU LOOK AT THIS DOCUMENT AS ONE OF THE
03:41:03 16 DOCUMENTS THAT YOUR COUNSEL SAID YOU WERE A SPONSORING WITNESS
03:41:06 17 FOR; DO YOU UNDERSTAND THAT?

03:41:07 18 A. OKAY.

03:41:07 19 Q. SO AT THIS POINT I MOVE 6095 INTO EVIDENCE YOUR HONOR?

03:41:11 20 THE COURT: ANY OBJECTION?

03:41:12 21 MR. FERRALL: NO OBJECTION.

03:41:13 22 THE COURT: IT WILL BE ADMITTED.

03:41:14 23 (PLAINTIFF'S EXHIBIT 6095 WAS ADMITTED INTO EVIDENCE.)

03:41:14 24 BY MR. NELSON:

03:41:16 25 Q. SO NOW IF YOU GO TO THE SECOND PAGE OF THAT PRESENTATION?

03:41:24 1 A. OKAY.

03:41:24 2 Q. AND YOU WILL SEE, THIS IS ARISTA'S SUMMARY OF THIS

03:41:28 3 *NETWORK WORLD* TEST RESULTS, CORRECT?

03:41:30 4 A. IT LOOKS LIKE IT, YEAH.

03:41:33 5 Q. YEAH. SO FOR EXAMPLE, IT SAYS ARISTA 7100 RATED BEST

03:41:37 6 PRODUCT; DO YOU SEE THAT?

03:41:38 7 A. UH-HUH.

03:41:39 8 Q. OKAY. AND YOU TALKED ABOUT THAT PRODUCT EARLIER, THE ONE

03:41:43 9 THAT WAS IN, AROUND THE 2010 TIMEFRAME; IS THAT RIGHT?

03:41:48 10 A. I'M NOT SURE WHICH ONE THIS WAS RATING, THAT ONE OVER

03:41:53 11 THERE WAS A 2008 PRODUCT. I'M NOT SURE, BUT, OKAY.

03:41:57 12 Q. YOU HAD MENTIONED IN YOUR DIRECT, THE 7500, I'M JUST

03:42:00 13 TRYING TO GET HOW THE 7500 SWITCH RELATES TO THE 7100 THAT'S --

03:42:07 14 A. OH, OKAY.

03:42:08 15 Q. ARE THEY THE SAME MODEL JUST -- SAME FAMILY?

03:42:11 16 A. THE 7500 IS THE CHASSIS WITH A DIFFERENT SHIP SET AND THE

03:42:16 17 7100 IS THE PIZZA BOX, THE FIXED CONFIGURATION.

03:42:18 18 Q. OKAY. SO THAT'S THE SECOND ONE YOU TALKED ABOUT?

03:42:24 19 A. SORRY, THAT?

03:42:25 20 Q. THE 7100?

03:42:28 21 A. THE 7100 IS THE PIZZA BOX.

03:42:30 22 Q. OKAY. SO NOW, SIR, IF YOU GO TO THE NINTH PAGE OF THAT,

03:42:48 23 AND YOU WILL SEE THAT THERE'S A COMPARISON HERE, ARISTA'S

03:42:51 24 SUMMARY OF THE ARISTA 7100 VERSUS AN HP SWITCH; DO YOU SEE

03:42:55 25 THAT?

03:42:56 1

A. OKAY.

03:42:58 2

Q. RIGHT. SO THE FIRST THING THERE IS ARISTA SAYING WE HAVE
ULTRALOW LATENCY 600 TO 700 NANOSECONDS; IS THAT RIGHT?

03:43:02 3

03:43:08 4

A. YES.

03:43:08 5

Q. AND THEN OVER ON THE HP SIDE, IN COMPARISON YOU SAY, IT'S
GOT HIGH LATENCY, I BELIEVE THAT'S 29 MICROSECONDS; IS THAT
RIGHT?

03:43:14 6

03:43:19 7

03:43:19 8

A. YES.

03:43:19 9

Q. SO THEN THE NEXT THING IT SAYS IS ARISTA 7100 HAS IOS-LIKE
CLI; RIGHT?

03:43:24 10

03:43:25 11

A. I SEE IT SAYS THAT.

03:43:26 12

Q. AND THAT WAS TRUE, YOUR UNDERSTANDING IS THAT THE SWITCHES
BACK IN THIS 2010 TIMEFRAME HAD WHAT WOULD BE REFERRED TO AS AT
LEAST AN IOS-LIKE CLI; RIGHT?

03:43:30 13

03:43:34 14

A. YEAH, LIKE MANY SWITCHES.

03:43:37 15

03:43:40 16

Q. OKAY. AND THEN IF YOU LOOK OVER HERE, AT LEAST ACCORDING
TO ARISTA'S SUMMARY ON THE RIGHT IT SAYS IT'S NOT CONSISTENT
WITH IOS?

03:43:44 17

03:43:50 18

A. I SEE THIS DOCUMENT, IT SAYS THAT.

03:43:50 19

03:43:52 20

Q. SO AT LEAST THE HP 6600 SWITCH DIDN'T HAVE AN IOS-LIKE
CLI; RIGHT?

03:43:57 21

03:43:57 22

A. I SEE THIS DOCUMENT SAYS THAT.

03:43:59 23

Q. RIGHT. AND YOU DIDN'T DO ANY INDEPENDENT ANALYSIS OF WHAT
OTHER VENDORS'S CLI'S WERE; RIGHT, IN THIS 2010 TIMEFRAME?

03:44:03 24

03:44:08 25

A. NO.

03:44:08 1 Q. RIGHT. SO YOU DON'T HAVE ANY BASIS TO DISPUTE WHAT'S
03:44:13 2 CONTAINED IN THE RESULT OF THE SUMMARIES; RIGHT?

03:44:14 3 A. I WOULDN'T KNOW ONE WAY OR THE OTHER HERE.

03:44:18 4 Q. OKAY. SO NOW IF WE GO TO THE NEXT PAGE OF THAT DOCUMENT
03:44:21 5 WHICH I BELIEVE IS PAGE 10, FOR THE RECORD I'M IN 6095,
03:44:26 6 EXHIBIT 6095?

03:44:27 7 THE COURT: THANK YOU.

03:44:28 8 MR. NELSON: YOU WILL SEE ONCE AGAIN, AT THE SECOND
03:44:31 9 LINE FOR THE ARISTA 7100, IT SAYS IOS-LIKE CLI.

03:44:37 10 DO YOU SEE THAT?

03:44:38 11 A. YES.

03:44:38 12 Q. WHICH IS CONSISTENT WITH THE EARLIER DESCRIPTION WE SAW OF
03:44:41 13 THE ARISTA 7100?

03:44:43 14 A. I SEE IT SAYS THAT.

03:44:44 15 Q. NOW FOR THE EXTREME X650, WHICH YOU UNDERSTAND TO BE AN
03:44:51 16 EXTREME SWITCH; IS THAT RIGHT?

03:44:52 17 A. YES.

03:44:52 18 Q. AND EXTREME IS A COMPANY THAT WAS A COMPETITOR OF ARISTA
03:44:56 19 BACK IN THIS 2010 TIMEFRAME?

03:44:58 20 A. YES, I BELIEVE SO.

03:44:59 21 Q. AND THE DOCUMENT 6095 SAYS, ONCE AGAIN NOT CONSISTENT WITH
03:45:03 22 IOS; RIGHT?

03:45:04 23 A. IT SAYS THAT, YES.

03:45:05 24 Q. SO ACCORDING TO THIS DOCUMENT THE EXTREME X650 DIDN'T HAVE
03:45:09 25 AN IOS-LIKE CLI, CORRECT?

03:45:11 1 A. THIS IS NOT CONSISTENT WITH IOS. I AGREE.

03:45:13 2 Q. OKAY. SO NOW IF I GO TO PAGE 12 OF THE DOCUMENT, EXHIBIT
03:45:25 3 6095, YOU WILL SEE THERE'S A REFERENCE HERE -- OR EXCUSE ME, A
03:45:29 4 COMPARISON HERE TO A DELL POWERCONNECT SWITCH; DO YOU SEE THAT?

03:45:33 5 A. I DO SEE THAT.

03:45:34 6 Q. AND DELL WAS ANOTHER COMPANY AT LEAST BACK IN THIS 2010
03:45:37 7 TIMEFRAME THAT WAS A COMPETITOR OF ARISTA'S MADE NETWORK
03:45:43 8 SWITCHES; RIGHT?

03:45:44 9 A. THEY MADE NETWORK SWITCHES, YES.

03:45:46 10 Q. AND SO HERE AGAIN GOING TO THE SECOND LINE FOR THE ARISTA
03:45:49 11 7100, ONCE AGAIN WE SEE "IOS-LIKE CLI;" DO YOU SEE THAT?

03:45:52 12 A. YES.

03:45:53 13 Q. AND THEN FOR THE DELL SWITCH, AT LEAST FOR THE
03:45:57 14 POWERCONNECT 8024 IT SAYS, NOT CONSISTENT WITH IOS; RIGHT?

03:46:01 15 A. YES.

03:46:02 16 Q. SO JUST A FEW MORE QUESTIONS FOR YOU, SIR.

03:46:06 17 SO YOU CAN PUT 6095 ASIDE. SO YOU ARE NOT AWARE OF ANY
03:46:21 18 ANALYSIS AT ARISTA OF OTHER EQUIPMENT VENDORS AND HOW OFTEN
03:46:25 19 THEY USE ANY PARTICULAR CLI COMMAND; ISN'T THAT RIGHT?

03:46:28 20 A. NO, I'M NOT AWARE.

03:46:30 21 Q. AND YOU WERE THE FIFTH EMPLOYEE, I THINK YOU SAID AT
03:46:33 22 ARISTA; IS THAT RIGHT?

03:46:35 23 A. SOMETHING LIKE THAT.

03:46:36 24 Q. OKAY. SO I WANT TO TALK TO YOU A BIT ABOUT THE STANDARDS.
03:46:43 25 YOU TALKED ABOUT THE ITEF; DO YOU RECALL THAT?

03:46:47 1

A. CORRECT.

03:46:47 2

Q. AND YOU HAD, YOU SHOWED US AN EXAMPLE OF AN RFC THAT YOU SUBMITTED; RIGHT?

03:46:51 3

03:46:52 4

A. YES.

03:46:53 5

Q. AND THE IETF, THAT GENERALLY CONCERNS LIKE PROTOCOLS AND THINGS LIKE THAT; RIGHT?

03:46:57 6

03:47:02 7

A. AMONG OTHER THINGS, YES.

03:47:03 8

Q. IN OTHER WORDS HOW THE DATA MIGHT BE FORMATTED TO PASS IT BACK AND FORTH BETWEEN EQUIPMENT, THINGS LIKE THAT?

03:47:06 9

03:47:09 10

A. THINGS LIKE THAT.

03:47:10 11

Q. BUT YOU'RE NOT AWARE OF ANY STANDARDS SETTING ORGANIZATION THAT HAS STANDARDIZED WHAT A COMMAND-LINE INTERFACE WOULD BE;

03:47:14 12

RIGHT?

03:47:20 13

03:47:20 14

A. NO, I'M NOT.

03:47:21 15

Q. AND THIS IETF, OF WHICH YOU ARE A MEMBER I TAKE IT; RIGHT?

03:47:28 16

A. MEMBER SHIP ISN'T REALLY AN EVENT WITH THE IETF, YOU BECOME A MEMBER BY GOING.

03:47:32 17

03:47:33 18

Q. SO YOU GO TO THE MEETINGS?

03:47:35 19

A. WELL, I DON'T THINK I HAVE BEEN SINCE 2005.

03:47:38 20

Q. OKAY. YOU WENT TO SOME OF THE MEETINGS?

03:47:41 21

A. I DID.

03:47:41 22

Q. BUT YOU'RE NOT AWARE OF ANY STANDARDS THAT THE IETF HAS ISSUED CONCERNING COMMAND-LINE INTERFACES; RIGHT?

03:47:45 23

03:47:47 24

A. NO, I'M NOT AWARE OF ANY.

03:47:49 25

Q. NOW, YOU'RE AWARE THAT JUNIPER HAS A CLI THAT'S PRETTY

03:47:56 1 DIFFERENT FROM ARISTA'S CLI; RIGHT?

03:47:59 2 A. IT'S DIFFERENT IN SOME NOTABLE WAYS.

03:48:04 3 Q. DIFFERENT IN SOME IMPORTANT WAYS, CORRECT?

03:48:06 4 A. I THINK IT'S DIFFERENT IN NOTABLE WAYS, YES.

03:48:11 5 Q. ARE YOU DRAWING A DISTINCTION BETWEEN NOTABLE AND
03:48:14 6 IMPORTANT?

03:48:15 7 A. IT'S NOTABLY DIFFERENT, I'M NOT SURE WHAT THE MEASURE OF
03:48:19 8 IMPORTANCE IS.

03:48:20 9 Q. I'M JUST GOING BY WHAT YOU INSIDE YOUR DEPO, I JUST WANT
03:48:24 10 TO KNOW IF YOU'RE MAKING A DISTINCTION BETWEEN NOTABLE AND
03:48:27 11 IMPORTANT?

03:48:27 12 MR. FERRALL: OBJECTION, YOUR HONOR. THIS LINE IS
03:48:29 13 OUTSIDE THE SCOPE.

03:48:30 14 THE COURT: SUSTAINED. LET'S MOVE ON.

03:48:31 15 BY MR. NELSON:

03:48:33 16 Q. SO YOU AGREE THOUGH, THAT A COMMAND-LINE INTERFACE IS AN
03:48:37 17 IMPORTANT PART OF A PRODUCT; RIGHT?

03:48:39 18 A. I MEAN, I THINK A PRODUCT NEEDS A COMMAND-LINE INTERFACE.

03:48:42 19 Q. RIGHT. IN FACT, YOU BELIEVE THAT A NETWORKING PRODUCT
03:48:46 20 CAN'T BE SUCCESSFUL IF IT DOESN'T HAVE A COMMAND-LINE
03:48:49 21 INTERFACE; RIGHT?

03:48:50 22 A. I THINK IT WOULD BE HARDER FOR A PRODUCT TO BE SUCCESSFUL
03:48:52 23 IN OUR SPACE WITHOUT A COMMAND-LINE INTERFACE.

03:48:54 24 Q. ALL RIGHT.

03:48:55 25 MR. NELSON: THANK YOU, SIR.

03:48:55 1 I DON'T HAVE ANY FURTHER QUESTIONS FOR YOU.

03:48:57 2 THE COURT: THANK YOU.

03:48:57 3 MR. FERRALL, DID YOU HAVE REDIRECT?

03:49:00 4 **REDIRECT EXAMINATION**

03:49:01 5 BY MR. FERRALL:

03:49:08 6 Q. MR. HOLBROOK, FOR AS LONG AS YOU'VE BEEN AT ARISTA, DID
03:49:13 7 ARISTA EVER TRY TO HIDE THAT IT HAD A CISCO-LIKE CLI?

03:49:18 8 A. NO.

03:49:21 9 Q. I JUST WANT TO LOOK AT ONE PAGE FROM EXHIBIT 6095, PAGE 5,
03:49:29 10 PLEASE. DO YOU SEE THAT ON THE SCREEN?

03:49:40 11 A. YES, I DO.

03:49:41 12 Q. DO YOU KNOW WHAT THIS PAGE IS DISPLAYING OR DISCUSSING?

03:49:49 13 A. YEAH, IT LOOKS LIKE IT'S COMPARING THE 7124 TO OTHER
03:49:53 14 PRODUCTS.

03:49:54 15 Q. AND DO YOU UNDERSTAND THESE WERE THE RESULTS OF THE
03:49:57 16 INDEPENDENT TESTING THAT NETWORK WORLD PERFORMED IN 2010?

03:50:02 17 A. YEAH, THAT'S HOW I INTERPRETED THIS.

03:50:04 18 MR. FERRALL: THANK YOU.

03:50:05 19 NO FURTHER QUESTIONS YOUR HONOR.

03:50:06 20 THE COURT: ANYTHING ELSE, MR. NELSON?

03:50:07 21 MR. NELSON: NOTHING FURTHER.

03:50:08 22 HE MAY BE EXCUSED, YOUR HONOR.

03:50:10 23 THE COURT: THANK YOU, MR. HOLBROOK, THANK YOU FOR
03:50:12 24 YOUR TESTIMONY. YOU MAY STEP DOWN. I GUESS YOU ARE EXCUSED AS
03:50:15 25 WELL.

03:50:15 1 I THINK I WANT TO TAKE ONE OTHER SHORT BREAK BEFORE WE --
03:50:18 2 BECAUSE OTHERWISE I WILL BREAK UP ANOTHER WITNESS, IF THAT'S
03:50:21 3 OKAY. LET'S TAKE ANOTHER TEN-MINUTE BREAK.

03:50:25 4 (RECESS FROM 3:50 P.M. UNTIL 4:00 P.M.)

04:01:01 5 THE COURT: PLEASE BE SEATED. ALL OF OUR JURORS ARE
04:01:32 6 HERE.

04:01:32 7 ALL RIGHT. ARE YOU READY TO CALL YOUR NEXT WITNESS?

04:01:36 8 MR. WONG: YES, YOUR HONOR. ARISTA IS CALLING
04:01:39 9 MR. ANTHONY LI.

04:01:52 10 THE COURT: OKAY.

04:01:59 11 IF YOU WOULD COME FORWARD TO THE WITNESS STAND, PLEASE AND
04:02:02 12 STAND TO BE SWORN.

04:02:04 13 **(PLAINTIFF'S WITNESS, ANTHONY LI, WAS SWORN.)**

04:02:05 14 THE WITNESS: YES.

04:02:15 15 THE CLERK: THANK YOU.

04:02:18 16 MR. WONG: YOUR HONOR, MAY I APPROACH?

04:02:19 17 THE COURT: YES, PLEASE.

04:02:20 18 THE CLERK: IF YOU WOULD PLEASE STATE YOUR NAME AND
04:02:25 19 SPELL YOUR LAST NAME FOR THE RECORD.

04:02:26 20 THE WITNESS: ANTHONY JOSEPH LI. LAST NAME IS LI.

04:02:30 21 **DIRECT EXAMINATION**

04:02:31 22 BY MR. WONG:

04:02:31 23 Q. GOOD AFTERNOON, SIR.

04:02:32 24 WE LAST MET AT YOUR DEPOSITION BACK IN FEBRUARY, BUT I

04:02:36 25 WILL REINTRODUCE MYSELF. MY NAME IS RYAN WONG, AND I'M ONE OF

04:02:39 1
04:02:40 2
04:02:42 3
04:02:46 4
04:02:47 5
04:02:49 6
04:02:50 7
04:02:52 8
04:02:52 9
04:02:54 10
04:02:55 11
04:02:59 12
04:03:02 13
04:03:04 14
04:03:04 15
04:03:08 16
04:03:09 17
04:03:13 18
04:03:15 19
04:03:19 20
04:03:20 21
04:03:23 22
04:03:25 23
04:03:26 24
04:03:28 25

THE ATTORNEYS FOR ARISTA.

WOULD YOU PLEASE INTRODUCE YOURSELF FOR THE JURY.

A. MY NAME IS ANTHONY JOSEPH LI. I'M A FORMER EMPLOYEE OF CISCO SYSTEMS.

Q. AND MR. LI, DO YOU LIVE IN THE AREA?

A. I DO.

Q. AND ARE YOU CURRENTLY EMPLOYED?

A. I AM.

Q. WHERE ARE YOU CURRENTLY EMPLOYED, SIR?

A. PELOTON TECHNOLOGY.

Q. AND WHAT DO YOU DO FOR PELOTON TECHNOLOGIES?

A. I'M THE DIRECTOR OF PLATFORM SOFTWARE.

Q. SO DO YOU WRITE SOFTWARE FOR PELOTON?

A. I DO.

Q. HAVE YOU WORKED AT OTHER COMPANIES BESIDES PELOTON? I KNOW YOU MENTIONED CISCO?

A. SEVERAL. JUNIPER NETWORKS, PROCTER NETWORKS.

THE COURT: MR. LI, I'M GOING TO NEED YOU TO SPEAK UP A LITTLE BIT. I KNOW YOUR CHAIR DOESN'T MOVE, BUT YOUR MICROPHONE DOES.

THE WITNESS: JUNIPER NETWORKS AND PROCTER NETWORKS.

Q. ARE THOSE COMPANIES IN THE SWITCH AND ROUTER INDUSTRY?

A. YES, THEY ARE.

Q. HAVE YOU WORKED IN ANY OTHER COMPANIES IN THE SWITCH AND ROUTER INDUSTRIES BESIDES THE ONES YOU JUST LISTED?

04:03:31 1 A. ERICSSON.

04:03:33 2 Q. HAVE YOU EVER WORKED AT ARISTA NETWORKS?

04:03:35 3 A. NO, I HAVE NOT.

04:03:36 4 Q. COULD YOU PLEASE TELL THE JURY YOUR EDUCATIONAL

04:03:40 5 BACKGROUND, PLEASE?

04:03:40 6 A. I HAVE A BACHELOR'S IN MATHEMATICS FROM HARVEY MUDD

04:03:48 7 COLLEGE, AND A PH.D. IN COMPUTER SCIENCE FROM USC.

04:03:53 8 Q. AND WHEN DID YOU OBTAIN THOSE DEGREES, MR. LI?

04:03:56 9 A. HARVEY MUDD WAS 1982, AND USC WAS 1990.

04:04:00 10 Q. NOW SAID YOU THAT YOU HAD PREVIOUSLY WORKED FOR CISCO,

04:04:05 11 CORRECT?

04:04:05 12 A. YES.

04:04:06 13 Q. WHEN DID YOU FIRST JOIN CISCO AS AN EMPLOYEE, MR. LI?

04:04:09 14 A. 1991.

04:04:10 15 Q. OKAY. AND WHAT WAS YOUR TITLE WHEN YOU JOINED CISCO IN

04:04:14 16 1991?

04:04:14 17 A. I BELIEVE IT WAS SOFTWARE ENGINEER 1.

04:04:17 18 Q. AND HOW LONG DID YOU WORK AT CISCO WHEN YOU JOINED BACK IN

04:04:22 19 1991?

04:04:23 20 A. SO I'VE WORKED FOR CISCO FOR FOUR DIFFERENT OCCASIONS.

04:04:28 21 THAT FIRST OCCASION WAS FOR FIVE YEARS.

04:04:30 22 Q. AND WE WILL GET BACK TO THE OTHER TIMES THAT YOU WORKED AT

04:04:33 23 CISCO.

04:04:34 24 WELL ACTUALLY, HOW RECENTLY WERE YOU AN EMPLOYEE AT CISCO,

04:04:38 25 MR. LI?

04:04:39 1 A. I BELIEVE THE LAST TIME ENDED IN 2013.

04:04:42 2 Q. SO LET'S TALK A BIT ABOUT THE FIRST TIME THAT YOU WORKED

04:04:48 3 AT CISCO AND THAT WAS STARTING IN 1991, CORRECT?

04:04:50 4 A. YES.

04:04:51 5 Q. OKAY. AND YOU SAID YOU WORKED THERE FOR ABOUT FIVE YEARS?

04:04:54 6 A. YES, THAT'S CORRECT.

04:04:55 7 Q. SO THAT WOULD BE 1991 TO 1996?

04:04:58 8 A. YES.

04:04:58 9 Q. NOW YOU WHEN YOU JOINED CISCO IN 1991, WHAT PRODUCTS DID

04:05:02 10 YOU WORK ON?

04:05:04 11 A. PRIMARILY, I WORKED ON IOS, THE OPERATING SYSTEM FOR THE

04:05:09 12 CISCO ROUTERS.

04:05:10 13 Q. DID THAT ROUTER YOU WORK ON HAVE A NAME?

04:05:12 14 A. THERE WERE SEVERAL OF THE ROUTERS THAT I ENDED UP WORKING

04:05:16 15 ON. THE FIRST WAS THE AGS PLUS. THERE WAS ALSO AN MGS, A CGS,

04:05:22 16 AND A 7000.

04:05:23 17 Q. OKAY. AND AGAIN, WE ARE STILL TALKING ABOUT THE 1991 TO

04:05:27 18 1996 TIME PERIOD; RIGHT?

04:05:29 19 A. THAT'S CORRECT.

04:05:29 20 Q. NOW DURING THAT TIME PERIOD, MR. LI, YOU SAID YOU WORKED

04:05:33 21 WITH THE IOS OPERATING SYSTEM, CORRECT?

04:05:36 22 A. YES.

04:05:37 23 Q. HOW FAMILIAR DID YOU BECOME DURING THAT FIRST PERIOD OF

04:05:42 24 TIME WHERE YOU WORKED AT CISCO WITH THE CISCO IOS CLI?

04:05:46 25 A. VERY FAMILIAR.

04:05:47 1 Q. OKAY. AND HOW FAMILIAR DID YOU BECOME WITH THE COMPONENTS
04:05:52 2 OF THE CISCO IOS CLI SUCH AS THE MODES AND PROMPTS AND THE
04:05:58 3 COMMAND SET?

04:05:59 4 A. VERY, VERY FAMILIAR.

04:06:00 5 Q. CAN YOU DESCRIBE TO THE JURY A LITTLE BIT OF THE TYPE OF
04:06:05 6 WORK THAT YOU WERE DOING AT CISCO DURING THAT TIME PERIOD
04:06:08 7 BETWEEN 1991 AND 1996?

04:06:11 8 A. I HAD SEVERAL PROJECTS. MANY OF THEM WERE IN THE ROUTING
04:06:14 9 PROTOCOLS AREA WHERE I WAS DEVELOPING ROUTING PROTOCOLS FOR IP
04:06:21 10 ROUTING.

04:06:22 11 Q. COULD YOU TELL THE JURY SOME OF THE ROUTING PROTOCOLS THAT
04:06:25 12 YOU WERE WORKING ON DURING IN 1991 TO 1996 TIME PERIOD AT
04:06:29 13 CISCO?

04:06:30 14 A. THAT INCLUDED RIP, IGRP, OSPF, ISIS AND BGP.

04:06:39 15 Q. AND ALL OF THOSE STANDARDS THAT YOU JUST LISTED, MR. LI,
04:06:43 16 ARE ALL OF THOSE INDUSTRY STANDARDS?

04:06:44 17 A. NO, IGRP IS CISCO PROPRIETARY.

04:06:49 18 Q. AND THE OTHER ONES YOU LISTED BGP, ISIS, ARE THOSE
04:06:53 19 INDUSTRY STANDARDS?

04:06:54 20 A. THOSE ARE INDUSTRY STANDARDS.

04:06:54 21 Q. AND DO YOU KNOW WHAT THE STANDARD SETTING BODY IS FOR
04:06:57 22 THOSE INDUSTRY STANDARDS THAT WE JUST MENTIONED?

04:06:59 23 A. I DO. IGRP, OSPF AND BGP ARE STANDARDS OUT OF THE
04:07:04 24 INTERNET ENGINEERING TASK FORCE. ISIS IS THE STANDARD OUT OF
04:07:09 25 THE OSI GROUP.

04:07:10 1 Q. OKAY. AND MR. LI, HAVE YOU PERSONALLY BEEN INVOLVED IN
04:07:14 2 ANY OF THE STANDARD SETTING PROCESSES FOR THESE NETWORKING
04:07:19 3 PROTOCOLS?

04:07:19 4 A. YES, I HAVE. I HAVE BEEN INVOLVED IN THE BGP WORKING
04:07:23 5 GROUP, IN THE ISIS WORKING GROUP, AND I'VE DONE SOME STUFF WITH
04:07:29 6 RIP.

04:07:31 7 Q. WHEN WAS YOUR FIRST EXPOSURE TO THE CISCO IOS CLI?

04:07:36 8 A. I FIRST BECAME FAMILIAR WITH THE CISCO CLI AS A CISCO
04:07:40 9 CUSTOMER IN 1987. I WAS EMPLOYED AT USC AS A NETWORK MANAGER
04:07:46 10 AND WE HAD A CISCO BOX THERE.

04:07:48 11 Q. AND IS THAT USC THE UNIVERSITY OF SOUTHERN CALIFORNIA?

04:07:51 12 A. YES, IN LOS ANGELES.

04:07:54 13 Q. OKAY. WAS THE CISCO IOS CLI THAT YOU USED AT USC, WAS
04:08:00 14 THAT THE FIRST COMMAND-LINE INTERFACE THAT YOU USED?

04:08:02 15 A. NO, I USED MANY OF THEM BEFORE THAT.

04:08:04 16 Q. OKAY. WHAT OTHER CLI'S DID YOU USE BEFORE YOU USED THE
04:08:11 17 CISCO IOS CLI?

04:08:13 18 A. I HAD USED TOPS 20, TOPS 10, CPM, RSTS, MANY OTHERS.

04:08:22 19 Q. AND ARE ANY OF THOSE PRODUCTS THAT YOU JUST NAMED, ARE ANY
04:08:28 20 OF THOSE CISCO PRODUCTS?

04:08:30 21 A. NO, NONE OF THEM ARE.

04:08:31 22 Q. DO YOU KNOW WHO THE MANUFACTURER IS FOR THOSE CLI'S THAT
04:08:35 23 YOU HAD USED BEFORE YOU STARTED USING THE CISCO IOS CLI?

04:08:38 24 A. YES. SEVERAL OF THOSE ARE, WERE THE PRODUCT OF DIGITAL
04:08:43 25 EQUIPMENT CORPORATION, CPM WAS A PRODUCT OF DIGITAL RESEARCH.

04:08:48 1 Q. AND IS DIGITAL EQUIPMENT CORPORATION, ARE THEY ALSO CALLED
04:08:59 2 DEC?
04:08:59 3 A. YES.
04:08:59 4 Q. DID YOU EVER ANY OTHER EXPERIENCE WORKING WITH DEC CLI'S
04:09:03 5 BESIDES TOPS 20 AND TOPS 10?
04:09:05 6 A. THERE WAS ANOTHER OPERATING SYSTEM KNOWN AS 10X WHICH RAN
04:09:10 7 ON DEC HARDWARE BUT WAS PRODUCED BY ANOTHER COMPANY.
04:09:13 8 Q. OF ALL THOSE CLI'S THAT YOU JUST MENTIONED, WHICH OF THEM
04:09:19 9 EXISTED PRIOR TO 1985?
04:09:23 10 A. I BELIEVE ALL OF THEM DID.
04:09:24 11 Q. HAVE YOU EVER USED THE DEC VMS CLI?
04:09:31 12 A. I HAVE.
04:09:32 13 Q. OKAY. AND DO YOU KNOW WHEN YOU FIRST STARTED USING THE
04:09:35 14 DEC VMS CLI?
04:09:37 15 A. APPROXIMATELY 1981.
04:09:41 16 Q. AND WAS THAT ALSO WHEN YOU WERE WORKING AT THE UNIVERSITY
04:09:44 17 OF SOUTHERN CALIFORNIA, MR. LI?
04:09:46 18 A. NO, THAT WAS WHILE I WAS A STUDENT AT HARVEY MUDD, I HAD A
04:09:53 19 780 RUNNING VMS.
04:09:54 20 Q. AND PRIOR TO JOINING CISCO IN 1991, ABOUT HOW MANY YEARS
04:09:59 21 EXPERIENCE DID YOU HAVE USING THE DEC VMS CLI?
04:10:03 22 A. PROBABLY ABOUT EIGHT YEARS.
04:10:08 23 Q. CAN YOU DESCRIBE TO THE JURY THE KINDS OF COMMANDS THAT
04:10:13 24 THE DEC VMS CLI SUPPORTED?
04:10:16 25 A. THE DEC VMS CLI HAD MANY DIFFERENT CLI COMMANDS. PROBABLY

04:10:24 1 THE MOST COMMON ONE WAS THE "SHOW" COMMAND. THIS WAS USED FOR
04:10:28 2 DISPLAYING INFORMATION.

04:10:29 3 Q. AND WERE THE VMS COMMANDS, WERE THEY SINGLE COMMANDS OR
04:10:39 4 MULTIWORD COMMANDS?

04:10:40 5 A. THEY WERE MULTIWORD COMMANDS SUCH AS "SHOW VERSION."

04:10:43 6 Q. BESIDES "SHOW VERSION" THAT YOU JUST MENTIONED, WERE THERE
04:10:46 7 ANY OTHER SHOW COMMANDS THAT YOU RECALL BEING SUPPORTED BY THE
04:10:51 8 VMS CLI?

04:10:51 9 A. I'M SORRY, I DON'T RECALL.

04:10:53 10 Q. WERE THERE MORE SHOW COMMANDS THAN JUST "SHOW VERSION?"

04:10:57 11 A. THERE WERE MANY.

04:10:58 12 Q. AND AGAIN, THE TIME PERIOD THAT WE ARE TALKING ABOUT HERE,
04:11:00 13 WAS THIS 1981?

04:11:02 14 A. 1981, PROBABLY UP THROUGH ABOUT '87, '88.

04:11:06 15 Q. WAS THERE A PARTICULAR SYNTAX THAT THE DEC VMS SHOW
04:11:14 16 COMMANDS FOLLOWED?

04:11:14 17 A. YES. IT WAS TYPICALLY VERB OBJECT, AND THEN OPTIONS AFTER
04:11:21 18 THAT.

04:11:21 19 Q. AND SO BY VERB, OBJECT AND OPTIONS, THE VERB FOR THE SHOW
04:11:26 20 COMMANDS IS THE "SHOW" WORD, CORRECT?

04:11:28 21 A. CORRECT.

04:11:28 22 Q. AND OF THE MANY SHOW COMMANDS THAT WERE SUPPORTED IN THE
04:11:34 23 VMS CLI AS YOU JUST TESTIFIED, DID THEY ALL FOLLOW THAT
04:11:38 24 PARTICULAR SYNTAX?

04:11:39 25 A. THEY TRIED TO.

04:11:40 1 Q. DID MOST OF THEM FOLLOW THAT SYNTAX?

04:11:42 2 A. MOST OF THEM.

04:11:43 3 Q. AND I THINK YOU MENTIONED THAT YOU HAD USED THE TOPS 20

04:11:51 4 CLI; IS THAT RIGHT?

04:11:52 5 A. YES.

04:11:52 6 Q. AND WHEN DID YOU FIRST START USING THE TOPS 20 CLI?

04:11:56 7 A. I FIRST STARTED USING THAT IN 1982 AS A GRAD STUDENT AT

04:12:03 8 ROCKHURST UNIVERSITY, AND I HAD AN ACCOUNT ON A TOPS 20 SYSTEM

04:12:07 9 THERE.

04:12:07 10 Q. AND THAT'S A CLI MADE BY DEC, CORRECT?

04:12:11 11 A. YES.

04:12:11 12 Q. AND PRIOR TO JOINING CISCO, APPROXIMATELY HOW MANY YEARS

04:12:15 13 DID YOU USE THE TOPS 20 CLI AS A USER?

04:12:19 14 A. APPROXIMATELY EIGHT YEARS.

04:12:20 15 Q. MR. LI, WAS THE TOPS 20 CLI SIMILAR AT ALL TO THE VMS CLI?

04:12:28 16 A. IT HAD SOME INTERCEPTIONS, BUT THERE WERE MANY THINGS THAT

04:12:35 17 WERE VERY DIFFERENT.

04:12:35 18 Q. CAN YOU EXPLAIN OR DO YOU RECALL ANY OF THE DIFFERENCES

04:12:39 19 BETWEEN THE VMS CLI AND THE TOPS 20 CLI?

04:12:42 20 A. THE TOPS 20 INCLUDES COMMANDS LIKE "COMPLETION" AND "HELP"

04:12:45 21 THAT WERE NOT PRESENT IN THE VMS CLI.

04:12:47 22 Q. WHEN YOU SAY "COMMAND COMPLETION," WHAT DO YOU MEAN BY

04:12:50 23 THAT?

04:12:50 24 A. IT MEANS THAT YOU COULD TYPE IN AN ESCAPE CHARACTER AND

04:12:54 25 THE CLI WOULD COMPLETE THE COMMANDS IF YOU HAD ONLY PARTIALLY

04:12:58 1
04:12:58 2
04:13:02 3
04:13:02 4
04:13:05 5
04:13:09 6
04:13:14 7
04:13:14 8
04:13:15 9
04:13:23 10
04:13:26 11
04:13:29 12
04:13:30 13
04:13:34 14
04:13:36 15
04:13:40 16
04:13:44 17
04:13:47 18
04:13:50 19
04:13:55 20
04:13:58 21
04:14:03 22
04:14:07 23
04:14:10 24
04:14:13 25

TYPED THE WORD.

Q. AND WHEN YOU MENTION THE HELP SYSTEM, WHAT DID YOU MEAN BY THAT?

A. YOU COULD ALSO TYPE IN QUESTION MARK ON THE COMMAND LINE, AND THE TOPS 20 CLI WOULD DISPLAY HELP INFORMATION.

Q. AND YOU REMEMBER USING THESE FEATURES BACK IN 1981 OR 1982 TIME PERIOD?

A. I DID.

Q. WHEN YOU FIRST USED THE CISCO IOS CLI, I GUESS THIS WAS IN THE LATE 80'S, MR. LI, DID YOU NOTICE ANY SIMILARITIES BETWEEN HOW IT WORKED AND HOW THE TOPS 20 CLI FUNCTIONED?

A. THERE WERE MANY SIMILARITIES.

Q. WHAT WERE THOSE SIMILARITIES BETWEEN THE DEC TOPS 20 CLI AND THE CISCO IOS CLI?

A. MANY OF THE HELP FUNCTIONS WERE MODELLED DIRECTLY AFTER WHAT WAS ON TOPS 20, IT LOOKED ALMOST IDENTICAL.

Q. WHAT OTHER SIMILARITIES WERE THERE BETWEEN THE TOPS 20 CLI AND THE CISCO IOS CLI?

A. THE OVERALL COMMAND SYNTAX WAS VERY SIMILAR. AGAIN, USING THE VERB OBJECT THEN OPTIONS FORMAT.

Q. ANY OTHER SIMILARITIES THAT YOU CAN RECALL BETWEEN THE DEC TOPS 20 CLI AND THE CISCO IOS CLI?

A. THOSE ARE THE PRIMARY ONES.

Q. OKAY. AND MR. LI, DO YOU KNOW WHY THOSE SIMILARITIES EXISTED BETWEEN THE CISCO IOS CLI AND THE TOPS 20 CLI?

04:14:18 1 A. MANY PEOPLE WORKING ON CISCO IOS WERE FANS OF THE TOPS 20
04:14:23 2 OPERATING SYSTEM. I BELIEVE LEN BOSACK, THE FOUNDER OF CISCO,
04:14:28 3 HAD ALREADY WORKED AT DEC AND WAS PART OF THE HARDWARE TEAM
04:14:32 4 DESIGNING THAT HARDWARE FOR DEC.

04:14:37 5 MR. VAN NEST: WOULD YOU ASK THAT AGAIN. I THINK
04:14:39 6 SOMEONE COUGHED.

04:14:41 7 MR. WONG: I'M SORRY.

04:14:42 8 Q. COULD YOU EXPLAIN AGAIN TO THE JURY, MR. LI, WHY THERE
04:14:47 9 WERE SIMILARITIES BETWEEN THE CISCO IOS CLI AND THE TOPS 20 CLI
04:14:51 10 MADE BY DEC?

04:14:52 11 A. THERE WERE MANY PEOPLE AT CISCO WHO WERE FANS OF THE TOPS
04:14:56 12 20 OPERATING SYSTEM. WE ACTUALLY HAD SEVERAL OF THEM THAT WE
04:14:59 13 DID DEVELOPMENT ON THERE, AND ALSO I BELIEVE WHEN LEN BOSACK
04:15:04 14 WAS A MEMBER OF THE DEC TOPS 20 DEVELOPMENT TEAM.

04:15:08 15 Q. AGAIN WHO WAS LEN BOSACK?

04:15:10 16 A. ONE OF THE FOUNDERS AT CISCO.

04:15:15 17 Q. NOW WE HAVE BEEN TALKING ABOUT SOME OF THE COMMAND
04:15:17 18 SYNTAXES THAT WERE PRESENT IN THE DEC VMS AND THE TOPS 20
04:15:24 19 CLI'S.

04:15:24 20 TO WHAT EXTENT, IF AT ALL, DID THOSE PRIOR CLI'S SEPARATE
04:15:29 21 THEIR COMMANDS INTO PRIVILEGED AND NON PRIVILEGED COMMANDS?

04:15:32 22 A. SO ALL OF THESE OPERATING SYSTEMS HAD SEPARATE COMMANDS
04:15:39 23 THAT REQUIRED SYSTEM ADMINISTRATOR PRIVILEGES TO USE.

04:15:41 24 Q. OKAY. AND WAS THAT TRUE BACK IN 1981 WHEN YOU WERE USING
04:15:46 25 THESE CLI'S?

04:15:47 1

A. YES.

04:15:47 2

Q. DO YOU RECALL IF THESE CLI'S THAT YOU USED BACK IN THE

04:15:53 3

EARLY 80'S SUPPORTED DIFFERENT MODES FOR THE USER USING THE

04:15:57 4

CLI?

04:15:58 5

A. SOMEWHAT. THE TOPS 20 OPERATING SYSTEM CLI HAD A FEW

04:16:06 6

DIFFERENT MODES THAT THEY WERE NOT COMMON, BUT IF YOU WANTED

04:16:12 7

DETAILED COMMANDS, YOU COULD GET AT THEM THROUGH USING SOME OF

04:16:16 8

THE EMBEDDED MODES, THE DIRECTORY COMMAND, HAD ADDITIONAL

04:16:24 9

MODES.

04:16:24 10

Q. NOW YOU LEFT CISCO, YOU SAID, AFTER YOUR FIRST TIME

04:16:29 11

WORKING THERE IN 1996, CORRECT?

04:16:31 12

A. YES.

04:16:31 13

Q. WHERE DID YOU GO AFTER YOU LEFT CISCO?

04:16:33 14

A. JUNIPER NETWORKS.

04:16:35 15

Q. AND WHAT WAS THE PRODUCT THAT JUNIPER NETWORKS WAS

04:16:41 16

BUILDING OR SELLING?

04:16:42 17

A. THEY WERE BUILDING ANOTHER ROUTER THAT BECAME THE M40.

04:16:46 18

Q. AND DID THE M40 ROUTER AT JUNIPER, WAS THAT A COMPETING

04:16:50 19

PRODUCT TO A CISCO ROUTER?

04:16:51 20

A. IT WAS.

04:16:52 21

Q. AND HOW LONG DID YOU WORK AT JUNIPER?

04:16:56 22

A. I WAS THERE FOR THREE YEARS.

04:16:58 23

Q. SO IS THAT APPROXIMATELY 1996 TO '99?

04:17:02 24

A. YES.

04:17:02 25

Q. DID THE JUNIPER ROUTER THAT YOU WORKED ON, DID IT HAVE AN

04:17:07 1 OPERATING SYSTEM?

04:17:08 2 A. IT DID.

04:17:08 3 Q. DID IT HAVE A NAME?

04:17:10 4 A. JUNOS.

04:17:10 5 Q. JUNOS. THANK YOU.

04:17:12 6 AND DID THE JUNOS OPERATING SYSTEM HAVE A COMMAND-LINE

04:17:16 7 INTERFACE?

04:17:16 8 A. IT DID.

04:17:17 9 Q. OKAY. AND BY THE WAY, MR. LI, WHEN YOU JOINED JUNIPER,

04:17:23 10 HOW MANY EMPLOYEES DID JUNIPER HAVE?

04:17:25 11 A. I WAS EMPLOYEE NUMBER FIVE, AND THAT INCLUDED THE THREE

04:17:30 12 FOUNDERS.

04:17:31 13 Q. DID YOU WORK AT ALL ON THE CLI AT JUNIPER?

04:17:34 14 A. I CONTRIBUTED marginally. MY FRIEND, PAUL TRAINOR WAS ONE

04:17:41 15 OF THE PRIMARY ENGINEERS WORKING ON THAT, AND I ADVISED HIM.

04:17:45 16 Q. THANK YOU.

04:17:45 17 WERE YOU AWARE OF AS TO HOW THE JUNIPER CLI WAS DESIGNED?

04:17:51 18 A. I WAS.

04:17:52 19 Q. OKAY. WERE THERE ANY OPERATIONAL DIFFERENCES BETWEEN THE

04:17:57 20 JUNIPER JUNOS CLI AND THE CISCO IOS CLI?

04:18:01 21 A. THERE WERE MANY.

04:18:02 22 Q. CAN YOU DESCRIBE SOME OF THOSE OPERATIONAL DIFFERENCES

04:18:06 23 BETWEEN THE JUNOS CLI AND THE CISCO IOS CLI?

04:18:10 24 A. THE PRIMARY DIFFERENCE THAT IS ACTUALLY DIFFICULT, IT'S

04:18:15 25 VERY DIFFERENT TO WORK WITH, IS THE JUNOS CLI IS STRICTLY

04:18:20 1 HIERARCHICAL, RATHER THAN HAVING SOME MODES THAT WERE NOT
04:18:25 2 SYNTACTICALLY APPARENT, THE JUNOS CLI MADE THOSE SUBSYSTEMS
04:18:30 3 VERY CLEAR IN THE SYNTACTIC MARKERS.
04:18:35 4 Q. AND WHAT DID THOSE SYNTACTIC MARKERS LOOK LIKE?
04:18:38 5 A. THOSE WERE CODE BRACES.
04:18:40 6 Q. SO DID THOSE OPERATIONAL DIFFERENCES BETWEEN THE JUNIPER
04:18:43 7 JUNOS CLI AND THE CISCO IOS CLI IMPACT THE SYNTAX OF THE JUNOS
04:18:47 8 CLI COMMANDS?
04:18:49 9 A. IT SIMPLIFIED THE JUNOS ONES, IT AVOIDED MANY OF THE
04:18:53 10 DIFFICULTIES THAT WE HAD WITH IOS PARSING.
04:18:55 11 Q. NOW DESPITE THE OPERATIONAL DIFFERENCES BETWEEN THE JUNOS
04:19:03 12 CLI AND THE IOS CLI, DID THE JUNOS CLI COMMANDS USE TERMS FROM
04:19:07 13 INDUSTRY STANDARDS?
04:19:07 14 A. IT USED MANY.
04:19:08 15 Q. AND WHY DID THE JUNOS CLI USE TERMS FROM INDUSTRY
04:19:13 16 STANDARDS?
04:19:13 17 A. IT WAS IMPORTANT THAT WE HAVE A PRODUCT THAT WAS
04:19:17 18 CONVENIENT AND WELL KNOWN TO THE EXISTING CUSTOMER BASE.
04:19:25 19 Q. NOW YOU LEFT JUNIPER IN 1999, CORRECT?
04:19:29 20 A. I DID.
04:19:29 21 Q. AFTER YOU LEFT JUNIPER, WHERE DID YOU WORK NEXT, MR. LI?
04:19:33 22 A. I WAS A COFOUNDER OF PROCKET NETWORKS.
04:19:35 23 Q. AND WHAT WAS YOUR POSITION AT PROCKET NETWORKS, BESIDES
04:19:38 24 COFOUNDER?
04:19:39 25 A. I WAS ALSO THE DIRECTOR OF SOFTWARE ENGINEERING AND CHIEF

04:19:42 1

SCIENTIST.

04:19:43 2

Q. AND THAT WAS IN 1999, AROUND THERE?

04:19:46 3

A. YES.

04:19:47 4

Q. AND WHAT WAS THE PRODUCT THAT YOU WERE WORKING ON AT

04:19:51 5

PROCKET NETWORKS?

04:19:52 6

A. WE WERE DEVELOPING ANOTHER CORE ROUTER, TWO MODELS, THE

04:19:58 7

8812 AND THE 8801.

04:19:59 8

Q. AND DID THE 8812 AND 8801 ROUTER FROM PROCKET NETWORKS WAS

04:20:08 9

THAT A COMPETING PRODUCT TO CISCO'S ROUTERS?

04:20:11 10

A. AND JUNIPER'S.

04:20:12 11

Q. DID THE PROCKET NETWORKS ROUTER THAT YOU WERE DEVELOPING

04:20:18 12

OR DEVELOPED HAVE A COMMAND-LINE INTERFACE?

04:20:20 13

A. IT DID.

04:20:20 14

Q. AND WHAT WAS YOUR ROLE, MR. LI, IN THE DEVELOPMENT OF THE

04:20:26 15

CLI ON THE PROCKET NETWORKS ROUTER?

04:20:29 16

A. SO MY ROLE AS DIRECTOR OF SOFTWARE OF ENGINEERING WAS TO

04:20:32 17

LEAD THE TEAM THAT WAS DEVELOPING THAT ENTIRE CLI.

04:20:36 18

I SET THE DIRECTION AND SPECIFICALLY REQUESTED TO THAT

04:20:39 19

TEAM THAT THEY BUILD THE CLI THAT EMULATED CISCO'S IOS.

04:20:45 20

Q. AND WHEN YOU SAY "EMULATED CISCO IOS," WHAT DO YOU MEAN BY

04:20:50 21

THAT?

04:20:50 22

A. WE USED MANY OF THE SAME SYNTACTICAL TERMS. WE WERE

04:20:55 23

TRYING TO ACHIEVE BUG-FOR-BUG COMPATIBLE WITH CISCO IOS.

04:21:00 24

Q. AND WHEN WAS THAT DECISION MADE AT PROCKET NETWORKS TO

04:21:03 25

EMULATE THE CISCO CLI DOWN TO THE BUGS?

04:21:05 1

A. APPROXIMATELY 1999.

04:21:08 2

Q. AND DID PROCKET NETWORKS CARRY OUT THAT DECISION WHEN IT
DESIGNED ITS CLI?

04:21:16 3

04:21:16 4

A. WE DID.

04:21:17 5

Q. TO WHAT EXTENT, IF AT ALL, WAS COMPATIBILITY A

04:21:23 6

CONSIDERATION WHEN PROCKET NETWORKS DECIDED TO MIMIC THE CISCO
IOS CLI?

04:21:28 7

04:21:30 8

A. COMPATIBILITY WAS OUR FOREMOST CONSIDERATION. WE WANTED

04:21:34 9

OUR ROUTER TO BE AS COMPATIBLE WITH OPERATIONAL REQUIREMENTS AS
WE COULD FOR THE CISCO INSTALLED BASE.

04:21:39 10

04:21:43 11

Q. TO WHAT EXTENT, IF AT ALL, DID THE PROCKET NETWORKS'S CLI

04:21:51 12

TRY TO MIMIC THE CLI COMMAND SET SUPPORTED BY CISCO IOS CLI?

04:21:55 13

A. WE TRIED TO INSTANTIATE AS MANY OF THE CISCO IOS COMMANDS

04:21:59 14

AS WERE RELEVANT TO OUR FUNCTIONAL BASIS OF OUR OPERATING

04:22:05 15

SYSTEM.

04:22:05 16

Q. AND WHEN YOU SAY "INSTANTIATE," DO YOU MEAN -- WHAT DO YOU

04:22:09 17

MEAN BY THAT?

04:22:09 18

A. TRY TO DEVELOP THE SAME COMMANDS, AS MANY AS POSSIBLE.

04:22:13 19

Q. AND WHEN YOU SAY THE "SAME COMMANDS," DO YOU MEAN THE SAME

04:22:17 20

WORDS IN THE SAME ORDER?

04:22:18 21

A. THE SAME WORDS USING THE EXACT SAME SYNTAX.

04:22:22 22

Q. TO WHAT EXTENT, IF AT ALL, DID THE PROCKET NETWORK'S CLI

04:22:27 23

TRY TO MIMIC THE COMMAND RESPONSES AND OUTPUTS FOR THE CISCO

04:22:31 24

IOS CLI?

04:22:32 25

A. THAT WAS A LITTLE MORE DIFFICULT. WE DID WHAT WE COULD TO

04:22:36 1 BE SIMILAR, BUT WE COULD NOT BE EXACTLY LITERAL.

04:22:41 2 Q. AND WHAT ABOUT THE CISCO IOS CLI MODES AND PROMPTS, DID
04:22:45 3 THE PROCKET NETWORK'S CLI TRY TO EMULATE THOSE MODES AND
04:22:50 4 PROMPTS?

04:22:50 5 A. YES, WE TRIED TO DO THAT. MANY CUSTOMERS HAD PROGRAMS
04:22:54 6 THAT DEPENDED ON THOSE MODES AND PROMPTS, AND WE WANTED TO
04:22:58 7 INTERACT WITH THOSE AS SEAMLESSLY AS POSSIBLE.

04:23:03 8 Q. WHAT ABOUT TYPOGRAPHICAL ERRORS THAT MIGHT HAVE EXISTED
04:23:06 9 WITHIN THE CISCO IOS CLI. DID PROCKET NETWORKS TRY TO MIMIC
04:23:09 10 THOSE ERRORS AS WELL?

04:23:10 11 A. AS FAR AS I KNOW, WE TRIED TO FIX THOSE.

04:23:13 12 Q. OKAY. WHEN YOU SAID BUG-FOR-BUG COMPATIBLE EARLIER IN
04:23:17 13 YOUR TESTIMONY, WHAT DID YOU MEAN BY THAT?

04:23:19 14 A. THERE WERE SEVERAL FUNCTIONS WITHIN CISCO IOS THAT WE FELT
04:23:24 15 WERE INAPPROPRIATE OR INCORRECT, AND THERE WERE STRONG ENGINEER
04:23:28 16 ARGUMENTS THAT WE SHOULD HAVE A DIFFERENT BEHAVIOR.

04:23:31 17 WE CHOSE TO EMULATE THE CISCO'S BEHAVIOR FOR THOSE
04:23:35 18 FUNCTIONS RATHER THAN DO WHAT WE FELT WAS ACTUALLY A BETTER
04:23:39 19 IMPLEMENTATION.

04:23:39 20 Q. AND WHY WAS THE DECISION MADE TO ACTUALLY KEEP THE BUGS
04:23:43 21 FROM THE CISCO IOS CLI IN THE PROCKET NETWORK'S CLI?

04:23:47 22 A. CHANGING OUR BEHAVIOR WOULD HAVE MADE US INCOMPATIBLE WITH
04:23:53 23 THE CISCO INSTALL BASE AND WOULD HAVE CAUSED THE CUSTOMERS
04:23:56 24 GREATER DIFFICULTY.

04:23:57 25 Q. DID YOU BELIEVE AT THE TIME THAT YOU ARE WERE WORKING AT

04:23:59 1 PROCKET NETWORKS, MR. LI, THAT IT WAS OKAY TO EMULATE THE CISCO
04:24:04 2 CLI?
04:24:04 3 A. YES, WE BELIEVED SO.
04:24:06 4 Q. AND WHY DID YOU BELIEVE IT WAS OKAY FOR PROCKET NETWORKS
04:24:10 5 TO EMULATE THE CISCO CLI, INCLUDING THE COMMANDS AND THE MODES
04:24:14 6 AND PROMPTS?
04:24:14 7 A. WE HAD ONE MEMBER FROM CISCO ON OUR BOARD WHO KNEW WHAT WE
04:24:19 8 WERE DOING, HAD RAISED NO OBJECTION, AND THEN WE ALSO HAD AN
04:24:23 9 EXAMPLE FROM FOUNDRY NETWORKS, WHO WAS ALSO EMULATING THE FULL
04:24:27 10 CISCO COMMAND SET, AND WE HAD HEARD NOTHING FROM THEM ABOUT ANY
04:24:31 11 DIFFICULTIES.
04:24:32 12 Q. WHY DID PROCKET NETWORKS CHOOSE TO EMULATE THE CISCO IOS
04:24:40 13 CLI AS OPPOSED TO THE JUNOS CLI THAT WAS USED BY JUNIPER?
04:24:45 14 A. AT THE TIME, CISCO HAD ABOUT 99 PERCENT MARKET SHARE.
04:24:49 15 Q. DID PROCKET NETWORKS EVER ASK ANYONE AT CISCO FOR
04:24:57 16 PERMISSION TO USE THE SAME COMMANDS THAT WERE IN THE IOS CLI?
04:25:03 17 A. WE DID NOT.
04:25:04 18 Q. AND WHY NOT, MR. LI?
04:25:06 19 A. WE FELT THAT BECAUSE FOUNDRY WAS NOT BEING PURSUED, THAT
04:25:10 20 WE WOULD NOT BE PURSUED EITHER. THAT WE WERE NOT ACTUALLY
04:25:16 21 INFRINGING ON CISCO'S INTELLECTUAL PROPERTY. THE CONCEPTS
04:25:20 22 BEHIND THE COMMANDS WERE FAR MORE IMPORTANT THAN THE COMMANDS
04:25:25 23 THEMSELVES.
04:25:26 24 Q. AND HOW LONG WERE YOU WORKING AT PROCKET NETWORKS, MR. LI?
04:25:29 25 A. FIVE YEARS.

04:25:30 1 Q. DURING THAT ENTIRE TIME PERIOD, DID YOU HEAR ANY OBJECTION
04:25:33 2 FROM CISCO TO PROCKET NETWORKS'S USE OF THE CISCO CLI?
04:25:37 3 A. NO, NONE AT ALL.
04:25:39 4 Q. AND DURING THAT FIVE-YEAR TIME PERIOD, MR. LI, DID PROCKET
04:25:45 5 NETWORKS DO ANYTHING TO TRY TO HIDE THE FACT THAT IT WAS USING
04:25:47 6 MANY OF THE SAME COMMANDS, MODES AND PROMPTS AS THE CISCO IOS
04:25:51 7 CLI?
04:25:52 8 A. ACTUALLY WE ACTIVELY TOUTED THAT TO THE CUSTOMER BASE.
04:25:55 9 Q. IF YOU OR THE MANAGEMENT OF PROCKET NETWORKS THOUGHT IT
04:26:06 10 WAS WRONG OR UNETHICAL TO COPY THE CISCO IOS CLI, WOULD YOU
04:26:09 11 HAVE DONE SO?
04:26:09 12 A. NO.
04:26:10 13 Q. MR. LI, DID PROCKET NETWORKS CREATE USER DOCUMENTATION FOR
04:26:14 14 ITS ROUTER PRODUCTS?
04:26:16 15 A. EXTENSIVELY.
04:26:17 16 Q. CAN YOU TAKE A LOOK AT THE BINDERS THAT ARE ON YOUR DESK
04:26:23 17 PLEASE, OR ON THE STAND. AND TAKE A LOOK, PLEASE, AT THE TAB
04:26:29 18 MARKED 6652. LET ME KNOW WHEN YOU ARE THERE.
04:26:35 19 A. I'M THERE.
04:26:36 20 Q. DO YOU RECOGNIZE THE DOCUMENT BEHIND TAB 6652?
04:26:39 21 A. I DO.
04:26:39 22 Q. AND WHAT IS THAT DOCUMENT?
04:26:40 23 A. THIS IS THE SOFTWARE INSTRUCTION MANUAL.
04:26:43 24 Q. I'M SORRY, CAN YOU SAY THAT AGAIN?
04:26:46 25 A. THIS IS THE PROCKET NETWORKS SOFTWARE INTRODUCTION MANUAL.

04:26:50 1 Q. AND HOW DO YOU KNOW THIS IS PROCKET NETWORKS' MANUAL?

04:26:55 2 A. IT HAS THE LOGO ON THE YOU UPPER LEFT-HAND CORNER.

04:26:58 3 Q. WERE YOU INVOLVED IN THE CREATION OF THE PROCKET NETWORKS
04:27:01 4 MANUAL?

04:27:01 5 A. INDIRECTLY, YES.

04:27:02 6 Q. WERE YOU FAMILIAR WITH THE MANUALS AT PROCKET NETWORKS
04:27:04 7 WHEN YOU WORKED THERE?

04:27:05 8 A. I WAS.

04:27:06 9 MR. WONG: YOUR HONOR, I WOULD LIKE TO MOVE TX 6652
04:27:10 10 INTO EVIDENCE.

04:27:10 11 THE COURT: ANY OBJECTION?

04:27:11 12 MR. NELSON: NO OBJECTION, YOUR HONOR.

04:27:12 13 THE COURT: IT WILL BE ADMITTED.

04:27:12 14 (DEFENDANT'S EXHIBIT 6652 WAS ADMITTED INTO EVIDENCE.)

04:27:14 15 BY MR. WONG:

04:27:14 16 Q. AND JUST FOR THE SAKE OF EFFICIENCY, MR. LI, COULD YOU
04:27:17 17 PLEASE LOOK AT THE FOLLOWING DOCUMENTS IN THIS BINDER AND THE
04:27:19 18 NEXT ONE, THOSE WOULD BE 6653, 6654, 6655, AND 6656.

04:27:29 19 AND MY QUESTION TO YOU, MR. LI, AFTER YOU CAN TAKE A LOOK
04:27:32 20 AT THOSE IS, DO YOU ALSO RECOGNIZE THOSE DOCUMENTS AS
04:27:35 21 DOCUMENTATION FROM PROCKET NETWORKS?

04:27:37 22 A. I DO, AND THEY ARE.

04:27:38 23 Q. OKAY.

04:27:40 24 MR. WONG: I WOULD ALSO LIKE TO MOVE TO ADMIT TX
04:27:43 25 6653, 6654, 6655, AND 6656 INTO EVIDENCE.

04:27:49 1 THE COURT: ANY OBJECTION?

04:27:50 2 MR. NELSON: NO OBJECTION.

04:27:51 3 THE COURT: IT WILL ALL BE ADMITTED.

04:27:43 4 (DEFENDANT'S EXHIBIT 6653, 6654, 6655, AND 6656 WERE ADMITTED
04:27:43 5 INTO EVIDENCE.)

04:27:53 6 BY MR. WONG:

04:27:53 7 Q. AND JUST SO THE JURY CAN SEE WHAT ONE OF THESE THINGS
04:27:58 8 LOOKS LIKE, CAN WE PUT UP TX 6654.

04:28:10 9 NOW MR. LI CAN YOU EXPLAIN TO THE JURY WHAT THIS DOCUMENT
04:28:12 10 IS?

04:28:13 11 A. THIS IS A SYSTEM MANAGEMENT AND OPERATIONS MANUAL.

04:28:16 12 Q. AND DO THE PROCKET NETWORKS DOCUMENTATION DESCRIBE THE CLI
04:28:21 13 MODES PROMPTS AND COMMANDS THAT ARE SUPPORTED BY PROCKET'S
04:28:24 14 ROUTER?

04:28:24 15 A. YES.

04:28:25 16 Q. OKAY. CAN WE TURN TO PAGE 45, PLEASE, OF THIS DOCUMENT.

04:28:37 17 NOW MR. LI, WHAT ARE WE SEEING HERE ON THIS PAGE.

04:28:42 18 A. THIS IS THE "SHOW CLOCK" COMMAND.

04:28:44 19 Q. OKAY. AND IS THIS A COMMAND THAT THE PROCKET NETWORKS
04:28:46 20 ROUTER SUPPORTED?

04:28:47 21 A. YES, IT IS.

04:28:48 22 Q. AND BY THE WAY, MR. LI, ARE THESE USER DOCUMENTATIONS, ARE
04:28:52 23 THEY ALL PUBLIC OR WERE THEY ALL PUBLIC?

04:28:54 24 A. THEY WERE AT ONE POINT.

04:28:56 25 Q. OKAY. WE WILL GET TO THAT IN A SECOND.

04:29:00 1 AND TO YOUR KNOWLEDGE, DO YOU KNOW, MR. LI, WHETHER THE

04:29:04 2 "SHOW CLOCK" COMMAND IS A COMMAND SUPPORTED BY CISCO IOS?

04:29:08 3 A. I BELIEVE IT'S THAT OR SOMETHING SIMILAR.

04:29:10 4 Q. OKAY. THANK YOU.

04:29:15 5 NOW MR. LI, IS PROCKET NETWORKS STILL IN BUSINESS TODAY?

04:29:18 6 A. NO, IT IS NOT.

04:29:19 7 Q. WHAT HAPPENED TO PROCKET NETWORKS?

04:29:20 8 A. IT WAS PURCHASED, IN LARGE PART, BY CISCO SYSTEMS.

04:29:24 9 Q. AND WHEN DID THAT HAPPEN, MR. LI?

04:29:28 10 A. 2004.

04:29:29 11 Q. AND DO YOU KNOW IF THE MANUALS THAT ARE IN YOUR BINDERS,

04:29:33 12 ARE THOSE THE COMPLETE SET OF PROCKET NETWORKS'S MANUALS?

04:29:37 13 A. NO, I BELIEVE THAT'S A SMALL SUBSET, ACTUALLY.

04:29:40 14 Q. DO YOU KNOW WHAT HAPPENED TO THE REST OF THE PROCKET

04:29:42 15 NETWORKS MANUALS AFTER ITS ASSETS WERE ACQUIRED BY CISCO?

04:29:47 16 A. SO AFTER ACQUISITION, CISCO REQUESTED THAT ALL MATERIALS

04:29:50 17 BE DESTROYED.

04:29:51 18 Q. WOULD IT SURPRISE YOU, MR. LI, THAT IN THIS LIMITED SUBSET

04:29:54 19 OF MANUALS IN THE TWO BINDERS HERE, THAT THERE ARE OVER 300

04:29:59 20 COMMANDS THAT OVERLAP WITH CISCO IOS COMMANDS?

04:30:01 21 A. NO SURPRISE AT ALL.

04:30:03 22 Q. WOULD YOU EXPECT THERE TO BE HUNDREDS MORE IN THE COMMANDS

04:30:06 23 THAT ARE NOW MISSING?

04:30:08 24 A. YES.

04:30:11 25 Q. AND MR. LI, AFTER YOU LEFT PROCKET -- WELL, WHEN DID YOU

04:30:16 1 LEAVE PROCKET NETWORKS?

04:30:16 2 A. I LEFT IN 2004.

04:30:19 3 Q. AFTER YOU LEFT PROCKET NETWORKS, YOU RETURNED TO CISCO HOW
04:30:21 4 MANY MORE TIMES?

04:30:22 5 A. THREE MORE TIMES.

04:30:23 6 Q. AND MOST RECENTLY YOU WORKED AT CISCO UNTIL ABOUT 2013,
04:30:28 7 CORRECT?

04:30:29 8 A. YES, THAT'S CORRECT.

04:30:30 9 Q. DO YOU KNOW WHAT A CISCO FELLOW IS?

04:30:31 10 A. I DO.

04:30:32 11 Q. WHAT IS A CISCO FELLOW?

04:30:35 12 A. THAT'S A TITLE FOR THE PEOPLE AT THE TOP LEVEL OF THE
04:30:38 13 TECHNICAL TRACK AT CISCO.

04:30:40 14 Q. DID YOU EVER OBTAIN THE TITLE OF CISCO FELLOW WHILE YOU
04:30:44 15 WERE AT CISCO?

04:30:45 16 A. I DID.

04:30:45 17 Q. AND OVER ALL THE YEARS THAT YOU WORKED AT CISCO, AFTER
04:30:52 18 COPYING THE IOS CLI AND USING IT AT PROCKET, DID ANYONE EVER
04:30:58 19 TELL YOU THAT IT WAS WRONG FOR PROCKET NETWORKS TO COPY THE
04:31:01 20 CISCO CLI DOWN TO ITS BUGS?

04:31:03 21 A. NO. I NEVER HEARD ANYONE CLAIM THAT THAT WAS WRONG.

04:31:07 22 Q. THANK YOU, MR. LI.

04:31:11 23 I HAVE NO FURTHER QUESTIONS.

04:31:14 24 THE COURT: MR. NELSON, CROSS-EXAMINATION?

04:31:17 25 MR. NELSON: YES, YOUR HONOR.

04:31:19 1 THE COURT: GO AHEAD.

04:31:20 2 **CROSS-EXAMINATION**

04:31:20 3 BY MR. NELSON:

04:31:37 4 Q. GOOD AFTERNOON, SIR.

04:31:39 5 A. GOOD AFTERNOON.

04:31:39 6 Q. MY NAME IS DAVE NELSON AND I REPRESENT CISCO IN THE CASE.

04:31:45 7 I'M GOING TO ASK YOU A FEW QUESTIONS?

04:31:46 8 A. PLEASE.

04:31:47 9 Q. FIRST OF ALL, I SHOULD GET YOUR TITLE RIGHT. I KNOW YOU

04:31:50 10 HAVE A PH.D., BUT WHAT DO YOU GO BY, MR.? DOCTOR?

04:31:53 11 A. DOCTOR IS FINE.

04:31:54 12 Q. OKAY. I WILL DO THAT, SIR.

04:31:57 13 SO DR. LI THEN, I WANT TO TALK ABOUT PROCKET A LITTLE BIT.

04:32:00 14 SO THAT WAS THE COMPANY THAT YOU MENTIONED EARLIER THAT

04:32:03 15 STARTED ABOUT 1999; RIGHT?

04:32:04 16 A. UH-HUH, YES.

04:32:05 17 Q. AND CISCO WAS AN INVESTOR IN THAT COMPANY YOU MENTIONED?

04:32:12 18 A. YES.

04:32:12 19 Q. SO THEY OWNED PART OF THAT COMPANY, CORRECT?

04:32:14 20 A. YES.

04:32:16 21 Q. AND HAD SOMEBODY SITTING ON THE BOARD, I THINK YOU

04:32:18 22 MENTIONED, RIGHT?

04:32:18 23 A. A BOARD AND SERVER.

04:32:20 24 Q. SO I THINK WHEN YOU WERE TALKING ABOUT THE PROCKET SWITCH,

04:32:23 25 THE PRODUCT THEY HAD THAT YOU SAID THAT YOU COPIED THE COMMANDS

04:32:29 1 THAT WERE RELEVANT TO THE FEATURE SET YOU HAD, ISN'T THAT
04:32:32 2 RIGHT?

04:32:32 3 A. THAT'S CORRECT.

04:32:32 4 Q. SO IN OTHER WORDS, YOU DIDN'T COPY COMMANDS THAT WEREN'T
04:32:35 5 RELEVANT TO FEATURES YOU DIDN'T HAVE IN THE PRODUCT; RIGHT?

04:32:38 6 A. YES.

04:32:38 7 FOR EXAMPLE, SINCE WE DID NOT SUPPORT APPLE TALK, WE DID
04:32:43 8 NOT IMPLEMENT THE APPLE TALK COMMANDS OUT OF IOS.

04:32:46 9 Q. RIGHT. IT WOULDN'T MAKE MUCH SENSE TO COPY COMMANDS THAT
04:32:49 10 DON'T HAVE ANYTHING TO DO WITH THE FEATURES IN YOUR PRODUCTS;
04:32:54 11 RIGHT?

04:32:54 12 A. YES.

04:32:54 13 Q. SO SIR, A COUPLE OF QUESTIONS, SO YOU WERE, JUST TO BE
04:32:57 14 CLEAR, IN 2004, THEN, WHEN PROCKET, I THINK YOU SAID WENT INTO
04:33:04 15 RECEIVERSHIP OR SOMETHING LIKE THAT?

04:33:07 16 A. IN 2004 WHAT HAPPENED, IS CISCO BOUGHT MANY OF THE PRIMARY
04:33:13 17 ASSETS OF PROCKET, AND THEN PROCKET ITSELF WENT INTO
04:33:18 18 RECEIVERSHIP, YES.

04:33:18 19 Q. OKAY. THANKS.

04:33:19 20 SO THEN 2004, CISCO BOUGHT THE MAJORITY OF THE ASSETS OF
04:33:24 21 THE COMPANY; RIGHT?

04:33:25 22 A. UH-HUH.

04:33:28 23 Q. NOW WERE YOU AWARE, SIR, THAT IN 2003, CISCO HAD FIND A
04:33:33 24 CASE AGAINST HUAWEI FOR, AMONG OTHER THINGS, COPYING ITS CLI?

04:33:36 25 A. I WAS NOT AWARE OF THAT.

04:33:38 1 Q. SO YOU DIDN'T KNOW ANYTHING ABOUT THE DETAILS OF THAT
04:33:40 2 CASE, SIR?

04:33:41 3 A. I DID NOT FOLLOW THAT IN GREAT DETAIL.

04:33:43 4 Q. OKAY. THANK YOU, SIR.

04:33:45 5 I DON'T HAVE ANY FURTHER QUESTIONS FOR YOU.

04:33:47 6 THE COURT: THANK YOU.

04:33:47 7 MR. WONG, DID YOU HAVE ANYTHING ELSE FOR THIS WITNESS?

04:33:50 8 MR. WONG: I DON'T.

04:33:50 9 THE COURT: MAY DR. LI BE EXCUSED?

04:33:52 10 MR. WONG: HE MAY.

04:33:53 11 THE COURT: DR. LI, THANK YOU FOR YOUR TESTIMONY.

04:33:55 12 YOU ARE FREE TO GO.

04:34:06 13 MR. VAN NEST: YOUR HONOR, AT THIS TIME WE PLAN TO
04:34:07 14 PLAY THE VIDEO TAPE DEPOSITION OF MR. GREG SATZ. AND THE VIDEO
04:34:12 15 TAPE IS ABOUT 15 MINUTES IN LENGTH.

04:34:15 16 THE COURT: OKAY.

04:34:15 17 MR. SILBERT: SATZ IS S-A-T-Z. AND I WILL GIVE
04:34:19 18 YOUR HONOR, LATER, THE TIME COUNT. THIS HAS CLIPS FROM BOTH
04:34:23 19 PARTIES.

04:34:24 20 THE COURT: THANK YOU.

04:34:25 21 MR. VAN NEST: SO WE ARE GOING TO PLAY IT ONCE WITH
04:34:27 22 EVERYTHING IN IT, AND THEN WE WILL HAVE HEARD FROM MR. SATZ.

04:34:30 23 THE COURT: THAT SOUNDS PERFECT.

04:34:32 24 THANK YOU.

04:34:32 25 **(THE VIDEO DEPOSITION OF GREG SATZ WAS PLAYED INTO THE**

04:36:07 1 **RECORD.)**

04:49:13 2 MR. VAN NEST: YOUR HONOR, THAT CONCLUDES THE VIDEO
04:49:15 3 FOR MR. SATZ, AND UNFORTUNATELY THIS MAY NOT BE TAKEN AS BAD
04:49:21 4 NEWS, WE MOVED A LITTLE MORE QUICKLY THIS AFTERNOON THAN I
04:49:24 5 THOUGHT, AND I DO NOT HAVE ANY OTHER LIVE WITNESSES. AND AS
04:49:28 6 YOUR HONOR KNOWS --

04:49:29 7 THE COURT: ALL RIGHT. CAN I EXCUSE THE JURY FOR THE
04:49:32 8 DAY?

04:49:32 9 MR. VAN NEST: CAN I MOVE ONE EXHIBIT FOR MR. SATZ,
04:49:35 10 MR. WONG REMINDED ME, INTO EVIDENCE. THAT WOULD BE TX 5146.

04:49:39 11 THAT'S THE ONE EXHIBIT THAT WAS SHOWN TO THE WITNESS
04:49:42 12 DURING THE EXAMINATION.

04:49:43 13 MR. PAK: NO OBJECTION, YOUR HONOR.

04:49:44 14 THE COURT: IT WILL BE ADMITTED.
04:49:45 15 (DEFENDANT'S EXHIBIT 5146 WAS ADMITTED INTO EVIDENCE.)

04:49:45 16 MR. VAN NEST: BUT YES, YOU CAN.

04:49:47 17 THE COURT: ALL RIGHT. LET'S LET THE JURY GO HOME.
04:49:50 18 ALL RIGHT. WE'VE REACHED THE END OF THE COURT DAY.

04:49:52 19 TOMORROW ON TUESDAY, REMEMBER YOU COME AT 10:00. I WILL
04:49:55 20 HAVE MY CRIMINAL CALENDAR FIRST, SO I WILL GET THAT TAKEN CARE
04:49:58 21 OF AND THEN I WILL SEE YOU AT 10:00 AND WE WILL HAVE A FULL DAY
04:50:03 22 AFTER THAT.

04:50:03 23 LEAVE ME YOUR NOTEBOOKS AND YOUR BINDERS AND YOUR BADGES.
04:50:08 24 HAVE A GOOD EVENING AND I WILL SEE YOU TOMORROW.

04:50:20 25 (JURY OUT AT 4:50 P.M.)

04:50:22 1 THE COURT: ALL RIGHT. PLEASE BE SEATED, EVERYONE.

04:50:43 2 MY ONLY ISSUE IS I ACTUALLY HAVE LOST TRACK OF WHAT WE
04:50:47 3 HAVE FOR TOMORROW MORNING. THERE'S ANOTHER DEPOSITION THAT WAS
04:50:51 4 GOING TO BE DELIVERED TO ME, IS THAT RIGHT?

04:50:54 5 MR. VAN NEST: YES. WELL, TWO THINGS.

04:50:57 6 YES, THE GOURLAY DEPOSITION SHOULD BE ON ITS WAY
04:51:02 7 EMINENTLY. I THOUGHT IT HAD BEEN DELIVERED ALREADY.

04:51:04 8 MR. FERRALL: THIS IS HOW EMINENT IT IS.

04:51:06 9 MR. VAN NEST: THERE IT IS.

04:51:07 10 THE COURT: THAT'S GOURLAY. OKAY.

04:51:09 11 MR. VAN NEST: THAT'S GOURLAY. AND I BELIEVE WE HAVE
04:51:15 12 SUBMITTED A NUMBER THAT ARE DUE TO BE PROVIDED NOW THAT HAVE
04:51:25 13 BEEN DELIVERED.

04:51:26 14 SO THE OTHER --

04:51:28 15 THE COURT: THE OTHER DEPOSITIONS, I'M JUST TRYING
04:51:31 16 TO -- WHAT OTHER DEPOSITION? BECAUSE I JUST WANT A LIST OF THE
04:51:36 17 DEPOSITIONS. I THOUGHT I WAS CAUGHT UP THIS MORNING WHEN I DID
04:51:40 18 SATZ AND --

04:51:42 19 MR. VAN NEST: YOU ARE, YOU ARE.

04:51:43 20 THE COURT: OKAY. THAT'S EXCELLENT.

04:51:47 21 MR. VAN NEST: YOU ARE CAUGHT UP.

04:51:49 22 THE COURT: I JUST WANT TO KEEP UP WITH YOU.

04:51:51 23 MR. VAN NEST: YOU ARE CAUGHT UP.

04:51:53 24 THE OTHER ONES WE HAVE IN THIS PACKET OR TO BE HERE
04:51:56 25 SHORTLY ARE GOURLAY, WHICH SHOULD BE THERE, AND KASTEN WE

04:52:01 1 COVERED.

04:52:02 2 THE COURT: WE'VE DONE KASTEN.

04:52:04 3 MR. VAN NEST: PATILL. P-A-T-I-L. CATO, C-A-T-O.

04:52:15 4 VENKATRAMAN, THAT'S V-E-N-K-A-T-R-A-M-A-N, AND MALIK,

04:52:21 5 M-A-L-I-K.

04:52:24 6 AND THAT'S ALL THE DEPOS. AND YOU HAVE EITHER RIGHT NOW

04:52:28 7 OR WILL SHORTLY.

04:52:30 8 THE COURT: IT LOOKS LIKE THAT MAY BE ALL OF THEM.

04:52:33 9 THE CLERK: GOURLAY IS NOT IN HERE. THE OTHERS ARE.

04:52:36 10 MR. VAN NEST: SO THAT'S THE OTHERS, AND GOURLAY WILL
04:52:39 11 BE HERE, I ASSUME, EMINENTLY.

04:52:41 12 MR. SANTACANA: I'M CHECKING ON IT, YOUR HONOR.

04:52:44 13 THE COURT: THANK YOU. I APPRECIATE THAT.

04:52:46 14 MR. VAN NEST: AND THE OTHER THING THAT WE SHOULD
04:52:48 15 NOTE IS THAT MR. SHAFER WILL BE HERE TOMORROW. I DON'T KNOW
04:52:54 16 WHAT TIME.

04:52:56 17 MR. PAK: MY UNDERSTANDING IS EITHER LATE MORNING OR
04:52:58 18 EARLY AFTERNOON, YOUR HONOR.

04:53:00 19 THE COURT: YOU ACCOMMODATE EACH OTHER.

04:53:02 20 MR. VAN NEST: LET ME SAY THIS ALSO BECAUSE I'M
04:53:05 21 TRYING TO AVOID THAT, I HAVE A WITNESS WHO IS ONLY AVAILABLE
04:53:09 22 TOMORROW. HIS NAME IS MIKE VOLPI, HE'S BEEN ON OUR LIST FOR
04:53:12 23 FOREVER, AND I WANT TO PUT HIM ON RIGHT AFTER LUNCH SO I GET
04:53:16 24 HIM DONE. AND I'M HAPPY TO DO MR. SHAFER BEFORE THAT OR AFTER
04:53:20 25 THAT. BUT AS SOON AS I GET THERE, HE'S ONLY HERE TOMORROW.

04:53:24 1 THE COURT: WELL, MR. VAN NEST, YOU ARE OFFERING A
04:53:28 2 COURTESY TO CISCO, SO I KNOW THEY WILL WORK AROUND YOUR
04:53:31 3 SCHEDULE.

04:53:31 4 MR. VAN NEST: PERFECT. THANK YOU, YOUR HONOR.

04:53:33 5 MR. PAK: WE WILL DO THAT, YOUR HONOR, OF COURSE.

04:53:35 6 MR. VAN NEST: OF COURSE, OTHERWISE I THINK WE ARE
04:53:37 7 CAUGHT UP.

04:53:37 8 AND AS TO WHAT'S THERE TOMORROW, I'M SURE THE PARTIES ARE
04:53:39 9 NARROWING THE OBJECTIONS, AND I'M SURE YOUR HONOR DOESN'T WANT
04:53:42 10 TO HEAR MUCH ABOUT THAT UNTIL WE GET HERE TOMORROW, AND
04:53:45 11 HOPEFULLY THERE WON'T BE MANY.

04:53:47 12 THE COURT: THAT'S GREAT.

04:53:49 13 WHAT I WILL PLAN TO DO IS TO READ THE THREE-PAGE BRIEF,
04:53:52 14 BUT NOTHING ELSE. SO I WILL BE FAMILIAR WITH THE TYPES OF
04:53:54 15 ISSUES. AND YOU WILL THEN BRING TO ME WHATEVER EXHIBITS MAY
04:53:58 16 STILL BE IN DISPUTE.

04:53:59 17 MR. VAN NEST: THAT'S GREAT. AND WE SHOULD BE HERE
04:54:01 18 AT 9:30?

04:54:02 19 THE COURT: YES. YES, 9:30, BECAUSE I'M STARTING AT
04:54:08 20 8:30 WITH MY CRIMINAL CALENDAR.

04:54:10 21 MR. VAN NEST: WE WILL BE HERE AT 9:30 HOPING THE
04:54:15 22 JURY WILL BE HERE TO START AT 10:00.

04:54:17 23 THE COURT: OKAY. AND DO YOU HAVE ANY OTHER
04:54:19 24 HOUSEKEEPING?

04:54:20 25 MR. PAK: NO, YOUR HONOR.

04:54:20 1 I THINK THERE WERE A COUPLE OF ITEMS FROM TODAY AND
04:54:23 2 YESTERDAY WE WILL FOLLOW UP WITH YOUR HONOR IN THE MORNING.
04:54:26 3 FOR EXAMPLE, THE MOTIONS TO STRIKE WE TALKED ABOUT AND GET THE
04:54:30 4 DOCUMENTS LINED UP AND.

04:54:32 5 THE COURT: THAT SOUNDS GOOD.

04:54:34 6 MR. VAN NEST: WE WILL PROVIDE, TIFFANY, YOUR HONOR,
04:54:36 7 WITH THE CUT FROM SATZ, PLAINTIFF TIME, DEFENSE TIME.

04:54:41 8 THE COURT: DO WE THINK THAT WE ARE ON TRACK TODAY TO
04:54:45 9 WRAP UP THE PRESENTATION OF EVIDENCE ON FRIDAY?

04:54:48 10 MR. VAN NEST: YES.

04:54:50 11 THE COURT: BECAUSE THAT WOULD BE NICE.

04:54:51 12 MR. VAN NEST: THAT'S MY PLAN. AND IT'S CONSISTENT
04:54:53 13 WITH -- WE GOT AS FAR TODAY AS I THOUGHT WE WOULD.

04:54:58 14 MR. PAK: THAT'S CONSISTENT WITH MY UNDERSTANDING AS
04:55:00 15 WELL, YOUR HONOR.

04:55:00 16 THE COURT: OKAY. THAT SOUNDS GREAT.

04:55:02 17 GOOD. ALL RIGHT. THANK YOU ALL.

04:55:03 18 MR. PAK: THANK YOU, YOUR HONOR.

04:55:04 19 MR. VAN NEST: THANK YOU, YOUR HONOR.

04:55:05 20 (THE PROCEEDINGS WERE CONCLUDED AT 4:55 P.M.)

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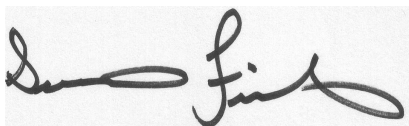
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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT
REPORTER OF THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH
FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY
CERTIFY:

THAT THE FOREGOING TRANSCRIPT,
CERTIFICATE INCLUSIVE, CONSTITUTES A TRUE, FULL AND
CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS
SUCH OFFICIAL COURT REPORTER OF THE PROCEEDINGS
HEREINBEFORE ENTITLED AND REDUCED BY COMPUTER-AIDED
TRANSCRIPTION TO THE BEST OF MY ABILITY.

A handwritten signature in black ink, appearing to read "Summer A. Fisher", is written over a light gray rectangular background.

SUMMER A. FISHER, CSR, CRR
CERTIFICATE NUMBER 13185

DATED: 12/5/16